

MONTANA LEGISLATIVE HISTORY

Chapter 382 19 92

Bill H _____ S 83 Original bill & history ☒ C

H. Committee on Business & Labor

Hearing Date(s) Mar 25 ☒ C

_____ C

_____ C

_____ C

Date Out _____ C

S. Committee on Business & Industry

Hearing Date(s) Jan 22 ☒ C

_____ C

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_____ C

Did this bill originate in an interim committee? ☐ Yes ☐ No

Committee _____

Report _____

1997 LEGISLATIVE HISTORY

The 1997 Montana Legislature has dramatically changed the nature of the legislative minutes. Specifically, the minutes from House committees are extremely sparse in content, offering no substantive information from which to glean legislative intent. The Senate committees' minutes are somewhat fuller in content. Exhibits available from the State Law Library (which may include written statements, attendant information, roll call votes, roll call attendance, a list of public members present, specific action taken on legislative bills, etc.) are included with this request. For information on other exhibits, contact the Montana Historical Society Archives at 444-4774. Exhibits may also be purchased on a CD-ROM from the Montana Legislative Council (444-3064).

Just as in the 1995 legislative session, the House and Senate hearings were recorded. The Historical Society is the depository for the tapes. For information on accessing the tapes, call the archives at 444-4774.

If you have concerns over the format of the 1997 legislative minutes, it is suggested that you contact your state legislators.

3/13 SIGNED BY PRESIDENT
 3/13 SIGNED BY SPEAKER
 3/14 TRANSMITTED TO GOVERNOR
 3/19 SIGNED BY GOVERNOR
 CHAPTER NUMBER 105
 EFFECTIVE DATE: 10/01/97

SB 82 INTRODUCED BY MAHLUM

LC0174 DRAFTER: KURTZ

ESTABLISH A SCENIC-HISTORIC BYWAYS PROGRAM
 BY REQUEST OF DEPARTMENT OF TRANSPORTATION

12/31	INTRODUCED		
1/02	FISCAL NOTE REQUESTED		
1/03	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/06	FIRST READING		
1/10	FISCAL NOTE RECEIVED		
1/11	FISCAL NOTE PRINTED		
1/21	HEARING		
1/30	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/04	2ND READING PASSED	39	11
2/05	3RD READING PASSED	39	11
	TRANSMITTED TO HOUSE		
2/06	FIRST READING		
2/06	REFERRED TO TRANSPORTATION		
3/07	HEARING		
3/10	TABLED IN COMMITTEE		
	DIED IN COMMITTEE		

SB 83 INTRODUCED BY SPRAGUE, ET AL.

LC0040 DRAFTER: MALY

AUTHORIZE THE CHARTERING OF FOREIGN CAPITAL DEPOSITORIES
 BY REQUEST OF JOINT INTERIM SUBCOMMITTEE ON STATE-CHARTERED
 FOREIGN INVESTMENT DEPOSITORY

12/31	INTRODUCED		
1/03	REFERRED TO BUSINESS & INDUSTRY		
1/06	FISCAL NOTE REQUESTED		
1/06	FIRST READING		
1/12	FISCAL NOTE RECEIVED		
1/14	FISCAL NOTE PRINTED		
1/22	HEARING		
1/23	COMMITTEE REPORT—BILL PASSED AS AMENDED		
1/27	2ND READING PASSED AS AMENDED	38	12
1/28	3RD READING PASSED	36	13
	TRANSMITTED TO HOUSE		
1/29	FIRST READING		
1/29	REFERRED TO BUSINESS & LABOR		
3/05	HEARING		
3/06	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/03	2ND READING CONCURRED	92	5
4/04	3RD READING CONCURRED	93	6
4/04	REVISED FISCAL NOTE REQUESTED		
	RETURNED TO SENATE WITH AMENDMENTS		
4/08	REVISED FISCAL NOTE RECEIVED		
4/08	2ND READING AMENDMENTS CONCURRED	50	0
4/08	REVISED FISCAL NOTE PRINTED		
4/11	3RD READING CONCURRED AS AMENDED	43	7
4/18	SIGNED BY PRESIDENT		
4/20	SIGNED BY SPEAKER		
4/21	TRANSMITTED TO GOVERNOR		

4/24 SIGNED BY GOVERNOR
 CHAPTER NUMBER 382
 EFFECTIVE DATE: 10/01/97—SECTIONS 1-6 & 8-90
 EFFECTIVE DATE: 04/24/97—SECTION 7

SB 84 INTRODUCED BY JERGESON, ET AL. LC0068 DRAFTER: MCCLURE

REQUIRE THE BOARD OF REGENTS, UPON APPROPRIATION OF FUNDS,
 TO PROVIDE FINANCIAL ASSISTANCE TO RESIDENT NONBENEFICIARY
 STUDENTS ATTENDING TRIBALLY CONTROLLED COMMUNITY
 COLLEGES IN MONTANA

BY REQUEST OF JOINT COMMITTEE ON POSTSECONDARY EDUCATION
 POLICY & BUDGET

12/31	INTRODUCED		
1/02	FISCAL NOTE REQUESTED		
1/03	REFERRED TO EDUCATION & CULTURAL RESOURCES		
1/06	FIRST READING		
1/09	FISCAL NOTE RECEIVED		
1/13	FISCAL NOTE PRINTED		
1/15	HEARING		
1/16	COMMITTEE REPORT—BILL PASSED		
1/21	2ND READING PASSED	30	19
1/22	3RD READING PASSED	28	22
	TRANSMITTED TO HOUSE		
1/23	FIRST READING		
1/23	REFERRED TO APPROPRIATIONS		
3/20	HEARING		
4/04	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		
4/07	2ND READING CONCURRED	79	20
4/07	3RD READING CONCURRED	78	21
	RETURNED TO SENATE WITH AMENDMENTS		
4/15	2ND READING AMENDMENTS CONCURRED	49	0
4/16	3RD READING CONCURRED AS AMENDED	44	6
4/18	SIGNED BY PRESIDENT		
4/20	SIGNED BY SPEAKER		
4/21	TRANSMITTED TO GOVERNOR		
4/22	SIGNED BY GOVERNOR		
	CHAPTER NUMBER 362		
	EFFECTIVE DATE: 04/22/97		

SB 85 INTRODUCED BY JERGESON LC0260 DRAFTER: ERICKSON

REVISE THE LAWS PERTAINING TO MOTOR VEHICLE EQUIPMENT
 BY REQUEST OF DEPARTMENT OF JUSTICE

12/31	INTRODUCED		
1/02	FISCAL NOTE REQUESTED		
1/03	REFERRED TO HIGHWAYS & TRANSPORTATION		
1/06	FIRST READING		
1/08	FISCAL NOTE RECEIVED		
1/13	FISCAL NOTE PRINTED		
1/16	HEARING		
1/30	COMMITTEE REPORT—BILL PASSED AS AMENDED		
2/05	2ND READING PASSED	28	22
2/06	3RD READING PASSED	31	19
	TRANSMITTED TO HOUSE		
2/07	FIRST READING		
2/07	REFERRED TO TRANSPORTATION		
3/07	HEARING		
3/12	COMMITTEE REPORT—BILL CONCURRED AS AMENDED		

SENATE BILL NO. 83

INTRODUCED BY SPRAGUE

BY REQUEST OF THE SUBCOMMITTEE ON THE FOREIGN INVESTMENT DEPOSITORY

A BILL FOR AN ACT ENTITLED: "AN ACT AUTHORIZING THE CHARTERING OF FOREIGN CAPITAL DEPOSITORIES; PROVIDING FOR THE RIGHTS OF FINANCIAL PRIVACY, ASSET PROTECTION, AND SPECIALIZED SERVICES TO NONRESIDENT ALIENS WHO ARE DEPOSITORY CUSTOMERS; ESTABLISHING THE DEPARTMENT OF COMMERCE AS THE REGULATING AUTHORITY; MANDATING COMPLIANCE WITH CERTAIN FEDERAL BANKING LAWS; PROVIDING FOR A NEW SOURCE OF STATE REVENUE DERIVED FROM AN ASSESSMENT BASED ON THE VALUE OF ASSETS ON DEPOSIT; AND AMENDING SECTIONS 15-1-501, 15-31-101, 15-31-102, 25-9-506, 25-9-603, 25-9-609, 32-1-101, 32-1-102, 32-1-202, 32-1-301, 32-1-446, 32-1-461, 32-1-462, 32-1-464, 32-1-468, 32-1-473, 32-1-491, 32-1-492, AND 32-1-501, MCA."

STATEMENT OF INTENT

A statement of intent is required for this bill because the bill gives the state banking board and the department of commerce authority to adopt administrative rules to effectuate the purposes, policies, and provisions of this bill. The legislature intends that rules be adopted by the state banking board to govern the processes and procedures for both issuing a charter and for suspending or revoking a charter for a foreign capital depository. Because the department of commerce bears responsibility for the regulation and supervision of a foreign capital depository, the legislature finds it prudent to delegate rulemaking authority to that department with respect to the conduct of examinations and inspections, for mandatory reports, and for other related administrative matters. Because the financial privacy of depository customers must be afforded the highest protection possible within the parameters of state and federal law and because an applicant for a depository charter must be provided a readily discernable combination of certainty and flexibility with respect to the services provided by a depository, a blanket delegation of rulemaking authority is not granted to either the board or the department.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MONTANA:

1 **NEW SECTION.** **Section 1. Purpose.** The legislature finds and declares that:

2 (1) political instability, economic insecurity, and financial risk outside the United States create
3 incentives for the transfer and investment of foreign capital derived from legitimate estates and business
4 activities to relatively safe places such as Montana;

5 (2) political conditions in some countries are contrary to the fundamental freedoms and individual
6 liberties codified in international human rights law and contained in the Montana constitution;

7 (3) it is in the public interest of Montana to attract legally derived foreign capital for investment,
8 revenue enhancement, and other economic development purposes as well as to facilitate tax abatement
9 for residents and businesses in the state;

10 (4) the legislature has the authority, in connection with its effort to improve economic conditions
11 in the state, to treat foreign persons differently than it does Montana citizens with respect to equal
12 protection of the law;

13 (5) because the Internal Revenue Code prohibits Montana from offering the type of tax shelters to
14 American citizens that are available to them in foreign jurisdictions and because few of the conditions
15 prevalent in other countries that give rise to capital flight exist in the United States, Montana is both
16 compelled and rationally motivated to offer specialized private financial services exclusively to foreign
17 customers;

18 (6) the state has the competence, capacity, and legitimate authority to charter and regulate
19 financial institutions under the dual banking system of the United States;

20 (7) a prudent blend of financial privacy, asset protection, and profitability may offer foreign
21 depositors unique opportunities to build and preserve their wealth in Montana;

22 (8) it is the intent of the legislature to protect both state and national interests by promoting legal
23 and technical standards and procedures to deter, prevent, and detect money laundering and other types
24 of financial crime.

25
26 **NEW SECTION.** **Section 2. Short title and scope.** (1) [Sections 1 through 46 and 65 through 67]
27 may be cited as the "Montana Foreign Capital Depository Act".

28 (2) [Sections 1 through 46] set forth the terms and conditions under which a foreign or domestic
29 financial institution may do business in Montana as a state-chartered foreign capital depository.
30

1 **NEW SECTION.** **Section 3. Definitions.** As used in [sections 1 through 46 and 65 through 67],

2 unless the context requires otherwise, the following definitions apply:

3 (1) "Bank holding company" means a company registered under the federal Bank Holding Company
4 Act of 1956, as amended.

5 (2) "Board" means the state banking board provided for in 2-15-1803.

6 (3) "Capital" means currency that is convertible to U.S. dollars or personal property, including
7 tangible personal property.

8 (4) "Cash" means currency, cashier's checks, money orders, and other monetary instruments as
9 defined in the Bank Secrecy Act (Public Law 91-508).

10 (5) "Charter" means a certificate issued by the state banking board through the commissioner to
11 a corporation verifying that the corporation is authorized to conduct business in Montana as a foreign
12 capital depository.

13 (6) "Commissioner" means the commissioner of banking and financial institutions provided for in
14 32-1-211.

15 (7) "Controlling person" means a person who holds 5% or more of the equity in a depository or
16 who is otherwise determined by the board to exercise controlling authority over decisions affecting the
17 management and operation of the depository.

18 (8) "Customer" means a person who is using or has used the services of a foreign capital
19 depository or for whom a foreign capital depository has acted as a fiduciary.

20 (9) "Department" means the department of commerce established in 2-15-1801.

21 (10) "Foreign bank" means a bank that has its primary office outside the jurisdiction of the United
22 States and is licensed under the laws of a foreign country or a political subdivision of a foreign country.

23 (11) "Foreign capital depository" or "depository" means a financial institution incorporated in
24 Montana and chartered by the board to conduct business as a foreign capital depository in accordance with
25 [sections 1 through 46].

26 (12) "Money laundering" is the process through which the existence, illegal source, true ownership,
27 or unlawful application of illicitly derived funds is concealed or disguised to make the funds appear
28 legitimate, thereby helping to evade detection, prosecution, seizure, or taxation.

29 (13) "Nonresident alien" means a person who is not a citizen or a resident of the United States.

30 (14) "Person" means an individual, partnership, corporation, limited liability company, association,

1 trust, or other legal entity.

2 (15) "Supervisory agency" means any of the following:

3 (a) the attorney general and the department of justice, established by 2-15-2001, for the purpose
4 of the enforcement of all criminal laws of the state;

5 (b) the department, for the purposes of the administration and enforcement of the state laws
6 relating to the examination and supervision of a foreign capital depository;

7 (c) the commissioner, for the purposes of the administration and enforcement of the state laws
8 relating to the chartering and supervision of a foreign capital depository;

9 (d) the board, for the purposes of chartering a foreign capital depository;

10 (e) the federal reserve system, when the chartered depository is a subsidiary of a financial
11 institution domiciled outside the jurisdiction of the United States, for the purposes of examining a foreign
12 capital depository;

13 (f) the legislative audit division, established by 5-13-301, for the purposes of the administration
14 of state laws relating to the audit of state agencies and the collection and disbursement of public funds;

15 (g) the department of revenue, established by 2-15-1301, for the purposes of the administration
16 and enforcement of laws relating to the collection of taxes or fees from a foreign capital depository;

17 (h) the insurance department, established by 2-15-1902, and the commissioner of insurance,
18 established by 2-15-1903, for the purpose of the administration and enforcement of state laws relating to
19 the regulation of an insurer of accounts in a foreign capital depository.

20 (16) "Tangible personal property" includes platinum, palladium, gold, or silver bullion or coins,
21 precious stones, jewelry, works of art, furnishings, and other objects of value that are not legal tender.

22

23 **NEW SECTION. Section 4. Charter required -- misrepresentation cause for disqualification.** (1) A
24 person may not operate or conduct business as a depository in this state without a charter issued by the
25 board.

26 (2) A depository shall post the charter certificate in a conspicuous place.

27 (3) A person who is found by the commissioner to have falsely represented to a customer that a
28 charter had been obtained is permanently disqualified from obtaining a charter.

29

30 **NEW SECTION. Section 5. Protection of appellation.** A corporation that has not been issued a

1 charter under the provisions of [section 8] may not transact business under a name or title that contains
2 the words "foreign", "capital", and "depository" in any combination.

3
4 **NEW SECTION. Section 6. Applicability of banking laws.** The provisions of 32-1-301, 32-1-446,
5 32-1-461, 32-1-462, 32-1-464, 32-1-468, 32-1-473, 32-1-491, 32-1-492, part 5 (except 32-1-507),
6 32-1-901 through 32-1-912, and 32-1-921 apply to a foreign capital depository unless a section in
7 [sections 1 through 46 and 65 through 67] or a rule or order issued under [sections 1 through 46 and 65
8 through 67] is inconsistent with any of the sections listed in this section.

9
10 **NEW SECTION. Section 7. Rulemaking authority.** (1) The board shall adopt rules to implement
11 [sections 8, 9, and 12].

12 (2) The department shall adopt rules to implement [sections 13, 14, and 18] and to specify the
13 conditions under which a depository may be found to be operating in a manner that is unsafe or unsound.

14
15 **NEW SECTION. Section 8. Charter eligibility and application requirements.** (1) In order to lawfully
16 conduct business in Montana as a foreign capital depository, a person intending to own and operate a
17 depository shall:

18 (a) obtain a state charter from the board through an application process established by the
19 commissioner and administered by the department;

20 (b) make and file articles of incorporation in accordance with 32-1-301;

21 (c) submit an application to the board on a form provided by the commissioner. An application must
22 be accompanied by:

23 (i) documents certifying that the identity of each director, executive officer, and controlling person
24 of the proposed depository has been verified by means of a background check;

25 (ii) a written copy of the applicant's know your customer policy and a written description of the
26 implementation method for the policy;

27 (iii) a detailed written description of the applicant's personnel training and preemployment screening
28 programs, physical and technological security systems, and methods of compliance with applicable federal
29 recordkeeping and reporting laws;

30 (iv) a business plan that includes projections of costs, profitability, and relevant changes in financial

1 markets;

2 (v) the intended location of each depository office in the state;

3 (vi) a document from a certified public accountant confirming that the applicant has financial assets
4 in excess of liabilities in an amount established by board rule;

5 (vii) a nonrefundable charter application fee of \$5,000 to be paid into the foreign capital depository
6 account established in [section 17].

7 (2) A foreign capital depository may be a subsidiary of a foreign bank that has obtained approval
8 from the federal reserve system to operate in the United States in accordance with the Foreign Bank
9 Supervision Enhancement Act of 1991.

10

11 **NEW SECTION. Section 9. Charter application -- grounds for denial.** (1) To safeguard the interests
12 and the reputation of the state, the board shall deny a charter application if it finds that the applicant
13 planning to operate the depository is not of good character or that the applicant is not financially sound.

14 (2) The board may find that the person planning to own, operate, or manage the depository is not
15 of good character or financial integrity if a director, an executive officer, or a controlling person of the
16 applicant has:

17 (a) been convicted of or has pleaded guilty or nolo contendere to any crime involving fraud, theft,
18 conspiracy, racketeering, or money laundering;

19 (b) had a professional or occupational license suspended or revoked based on conduct involving
20 an act of fraud or dishonesty;

21 (c) willfully made or caused to be made false or misleading statements in an application or report
22 to the commissioner or has willfully omitted facts required in the report;

23 (d) willfully violated a provision of [section 4 or 8] or aided, abetted, counseled, commanded,
24 induced, or procured the violation by another person of a provision of [section 4 or 8].

25 (3) Subsections (1) and (2) are not exclusive of other grounds on which the board may determine
26 that an applicant for a depository charter is not of good character and therefore may not receive a charter.

27 (4) The board may authorize the commissioner to conduct or obtain from a private investigative
28 service a background check on any director, executive officer, or controlling person of the depository for
29 the purposes of determining whether an applicant is of good character.

30 (5) The board shall adopt rules concerning the method and process for determining whether an

1 applicant for a charter is financially sound.

2

3 **NEW SECTION. Section 10. Suspension, revocation, and restoration of charter.** (1) The board
4 may suspend or revoke the charter of a depository if the board finds that the depository or any director,
5 executive officer, or controlling person of the depository has:

6 (a) violated a provision of [sections 1 through 46], a rule of the department established pursuant
7 to [sections 1 through 46], the Bank Secrecy Act, or any implementing regulation of the Bank Secrecy Act;

8 (b) failed to comply with an order of the commissioner;

9 (c) operated in a manner or condition that is unsafe or unsound;

10 (d) become insolvent in that the depository has ceased to pay its debts in the ordinary course of
11 business, it is unable to pay debts as they come due, or its liabilities exceed its assets;

12 (e) filed a petition for an adjudication of bankruptcy;

13 (f) knowingly made a false statement or report to the department;

14 (g) failed to pay the department of revenue the fee, penalty, or interest owed pursuant to [sections
15 58 through 60] before 5 p.m. on the last day of the 11th month after the date a deficiency assessment is
16 mailed; or

17 (h) if the depository is a subsidiary of a foreign bank holding company or another type of financial
18 institution, had its operating license suspended or revoked in the country where the parent company is
19 domiciled.

20 (2) Before suspending or revoking a charter, the board shall conduct a hearing in accordance with
21 the Montana Administrative Procedure Act relating to a contested case.

22 (3) On the recommendation of the department, the board may reinstate a charter that has been
23 suspended or revoked if the board finds that the depository has restored its integrity and financial
24 soundness.

25 (4) At no time during or following the suspension, revocation, or reinstatement of a charter may
26 a financial record pertaining to an individual account be disclosed except in accordance with rules for the
27 conduct of examinations in [section 15] or in accordance with [sections 29 through 46].

28

29 **NEW SECTION. Section 11. Administrative orders by commissioner.** (1) In addition to or in lieu
30 of the board's suspending or revoking the charter issued to a foreign capital depository, the commissioner

1 may:

2 (a) issue a cease and desist order that specifies the activity that the depository may not undertake
3 for the duration of the order;

4 (b) require a depository to take action as determined by the commissioner; or

5 (c) order the depository to pay a civil penalty in an amount not to exceed \$10,000 for each
6 violation or, in the case of a continuing violation, \$10,000 for each day during which the violation
7 continues.

8 (2) Orders issued by the commissioner pursuant to this section must be issued in compliance with
9 the contested case procedure of the Montana Administrative Procedure Act.

10
11 **NEW SECTION. Section 12. Charter and renewal fee.** (1) A successful applicant for a state
12 charter shall pay to the department an initial charter fee of \$50,000.

13 (2) A depository shall pay an annual charter renewal fee in an amount set by the board by rule but
14 not to exceed \$10,000.

15 (3) Fees collected pursuant to subsections (1) and (2) must be deposited in the foreign capital
16 depository account established in [section 17].

17
18 **NEW SECTION. Section 13. Regulation and supervision -- rules.** (1) To ensure that the department
19 meets its responsibility for the prudential supervision of a foreign capital depository, the department shall
20 adopt rules that:

21 (a) determine the processes and procedures necessary to ensure that the controlling persons and
22 employees and the procedures of a depository are in compliance with [sections 1 through 46 and 65
23 through 67];

24 (b) establish the procedures for the conduct of examinations of a depository by the department,
25 including the means by which the commissioner will verify that the depository's know your customer policy
26 has been implemented;

27 (c) establish the form of suspicious activity reports and the conditions under which a suspicious
28 activity report must be filed with the department;

29 (d) require a depository to submit to the department on request a written or electronic record of
30 any transfer or withdrawal of cash from the depository in an amount equal to or greater than \$10,000;

(e) require a depository to file an annual report with the department detailing the depository's:

(i) security measures designed to deter and prevent theft, fraud, and corruption;

(ii) procedures for filing suspicious activity reports with the U.S. department of the treasury and for keeping records and filing reports of transactions as required by federal law and regulation to combat money laundering and other criminal activities;

(iii) employee training programs regarding disclosure and other aspects of customer financial privacy; and

(iv) fulfillment of the know your customer policy recommended by the American bankers association or prescribed by federal regulation.

(2) With respect to an action concerning the issuance, suspension, or revocation of a charter or an action pursuant to enforcement in [sections 65 through 67], the department shall adopt rules to determine prehearing discovery procedures, including the taking of depositions and the production of documents.

(3) In adopting rules for hearings, the department shall provide for the issuance of subpoenas and for the administration of oaths to witnesses and parties or their representatives to apply both to discovery procedures and to hearings.

NEW SECTION. **Section 14. Costs of regulation.** A depository shall pay to the department an annual fee established by rule that is commensurate with the cost of conducting examinations of a depository by the department. The proceeds of the fee established by the department must be deposited in the foreign capital depository account created by [section 17].

NEW SECTION. **Section 15. Examinations.** (1) Except as provided in subsection (5), the department shall:

(a) examine, at least once every 12 months, each depository to:

(i) verify the depository's assets and liabilities;

(ii) ascertain the accuracy of the depository's books and records; and

(iii) determine whether the depository's methods of operation and conduct of business are in compliance with applicable laws and rules; and

(b) submit in writing to a depository examined in accordance with subsection (1)(a) a report of the

1 examination's findings no later than 60 days after the completion of the examination.

2 (2) A controlling person or employee of a foreign capital depository shall exhibit to the department
3 or an examiner from the federal reserve system on request the books, records, and accounts of the
4 depository, except that the identity of a customer may not be disclosed to the department or any examiner
5 unless the disclosure is necessitated by the department's procedure for verifying that the depository's know
6 your customer policy has been implemented effectively.

7 (3) The department may issue subpoenas and administer oaths to any director, executive officer,
8 controlling person, or employee of a foreign capital depository. In case of a refusal to obey a subpoena
9 issued by the department, the refusal may be reported to the district court of the district in which the
10 depository is located. The court shall enforce obedience to the subpoena in the manner provided by law
11 for enforcing obedience to the process of the court.

12 (4) If a depository charter is issued to a foreign bank, the department may conduct an examination
13 of the depository:

- 14 (a) in conjunction with supervisory personnel from the federal reserve system, or;
15 (b) without the assistance of federal reserve system personnel.

16 (5) The department may accept as the examination of a depository required by this section the
17 findings or results of an examination conducted by the federal reserve system.

18 (6) A foreign capital depository shall keep its corporate records, financial records, and books of
19 account in words and figures of the English language, in Montana, and in a form satisfactory to the
20 department.

21 (7) If a foreign capital depository is issued a charter to maintain two or more offices in the state,
22 the depository shall designate one of its offices as its primary office for the purposes of keeping
23 consolidated records and facilitating examinations by the department.

24
25 **NEW SECTION. Section 16. Special examinations -- costs.** (1) Whenever in the judgment of the
26 commissioner the condition of a depository or the actions of a customer necessitate an examination beyond
27 that required by [section 15], the department may conduct additional examinations determined to be
28 necessary and in connection with the additional examinations may charge the depository:

29 (a) an amount not to exceed \$400 a day for each examiner engaged in the examination of the
30 depository;

(b) the actual cost of travel expenses of the examiner in the event that travel outside this state is determined necessary by the commissioner; and

(c) a reasonable amount to recover the actual costs of counsel and other department resources.

(2) The money collected by the department pursuant to examination fees must be deposited in the foreign capital depository account established in [section 17].

NEW SECTION. Section 17. Foreign capital depository account. (1) There is an account in the state special revenue fund. Except for revenue derived in accordance with [sections 58 through 60], money from the foreign capital depository must be deposited in the account.

(2) The money in the account may be appropriated by the legislature to the department solely for the department's use in meeting its supervisory and regulatory obligations established in [sections 12 through 16].

NEW SECTION. Section 18. Reports -- contents and restrictions. (1) A depository shall make a report to the department in the manner and at the time required by the commissioner.

(2) A report filed with the department must:

(a) contain the information required by rule; and

(b) be verified by two of the depository's executive officers. The verification must state that each of the officers making the verification has a personal knowledge of the matters in the report and that each of them believes that each statement in the report is true.

(3) A depository may not include any financial record, as defined in [section 30], of any customer in the report.

(4) The department may provide a copy of the report to another supervisory agency.

NEW SECTION. Section 19. Recordkeeping and reporting -- suspicious activity. In addition to compliance with applicable provisions of the Bank Secrecy Act, a foreign capital depository shall:

(1) keep a written or electronic record of each wire transfer or other electronic means of transferring capital to the depository for at least 5 years when the transfer involves \$3,000 or more; and

(2) comply with federal regulation and rules of the department concerning the form of a suspicious activity report and the conditions under which a suspicious activity report is required to be reported to a

1 supervisory agency or to the U.S. department of the treasury.

2
3 **NEW SECTION. Section 20. Sale or transfer of charter prohibited -- penalty.** (1) A charter issued
4 by the board may not be sold, traded, transferred, or otherwise assigned to another corporation.

5 (2) A person who attempts to sell, trade, or transfer a depository charter or who knowingly accepts
6 a depository charter in violation of subsection (1) is subject to civil and criminal penalties pursuant to
7 [sections 66 and 67].

8
9 **NEW SECTION. Section 21. Dissolution -- closing.** (1) The board may, upon a finding of
10 negligence, misconduct, or any of the conditions specified in [section 9] dissolve the charter of a depository
11 and remove any directors, executive officers, or employees prior to the dissolution in accordance with the
12 provisions of Title 32, chapter 1, part 9.

13 (2) The department may close a depository and take possession of the books, records, and assets
14 of the depository and hold them until the depository is authorized by the board to resume business or until
15 its affairs are liquidated in accordance with Title 32, chapter 1, part 5.

16 (3) Except in accordance with the provisions in [sections 29 through 46], an individual financial
17 record may not be disclosed in the process of dissolving or closing a depository, and the penalties for
18 wrongful disclosure in [sections 29 through 46] apply to the board, the department, and the depository.

19 (4) A foreign capital depository may not close its primary office or cease operations without the
20 written approval of the department.

21 (5) Voluntary dissolution of a depository must comply with the provisions of 32-1-501.

22
23 **NEW SECTION. Section 22. Depository services -- allowed and mandated.** (1) A depository may:

24 (a) accept deposits in any currency or electronic form convertible to U.S. dollars;

25 (b) provide safe deposit and other storage services for the purpose of protecting the security of
26 a customer's tangible personal property;

27 (c) convert cash deposits to purchase orders for platinum, palladium, gold, or silver bullion on
28 behalf of or at the direction of a customer;

29 (d) purchase, sell, and pay interest to the customer derived from tax-exempt federal, state, county,
30 or municipal bonds on behalf of or at the direction of a customer;

1 (e) provide a customer with foreign currency in exchange for U.S. dollars in an equivalent monetary
2 amount;

3 (f) perform trust and related fiduciary services, as provided in 32-1-107, but only if the depository
4 has obtained a certificate from the department authorizing the depository to act as a trust company or the
5 subsidiary of a trust company prior to engaging in trust activities;

6 (g) issue a debit card or an automatic teller machine card to a customer;

7 (h) charge interest in relation to a customer's use of a debit or automatic teller machine card;

8 (i) establish different types of deposit accounts for customers;

9 (j) offer deposit or safe deposit insurance provided under contract with a financial guaranty insurer
10 approved by the insurance commissioner;

11 (k) charge fees related to the opening, management, and insuring of deposit accounts, the storage
12 and maintenance of tangible personal property, the establishment and administration of trust accounts, and
13 other lawful investment, legal, or financial services;

14 (l) set underwriting standards for each type of account that it offers to a customer; and

15 (m) establish a minimum deposit amount for any type of account as long as the minimum is not
16 less than \$200,000.

17 (2) A depository may in its discretion refuse an application for an account of any type.

18 (3) A depository shall:

19 (a) exercise extraordinary diligence in determining the genuine identity of a customer;

20 (b) protect the privacy of each customer as provided in [sections 29 through 46];

21 (c) in accordance with [sections 47 through 55], provide legal defense of a customer at the
22 customer's request or on the request of the customer's legal representative in the event a civil judgment
23 rendered against the depositor in a jurisdiction outside the United States is registered in Montana;

24 (d) with respect to precious metals accounts in [sections 25 through 28], comply with the statutory
25 protections against securities fraud under Title 30, chapter 10;

26 (e) comply with federal reporting and recordkeeping requirements as provided in the Bank Secrecy
27 Act, the Money Laundering Control Act of 1986, the Annunzio-Wylie Anti-Money Laundering Act, and
28 implementing regulations of each of those acts concerning money laundering and other financial crimes.
29

30 **NEW SECTION. Section 23. Depository services -- restrictions and prohibitions.** (1) A depository

1 may not accept a deposit:

2 (a) from an individual who is a citizen or a resident of the United States;

3 (b) from a corporation, trust, or partnership if any shareholder, settlor, member, beneficiary, or
4 partner is a citizen or a resident of the United States;

5 (c) in an amount valued at less than \$200,000 in U.S. dollars.

6 (2) A depository may not:

7 (a) engage in lending or any related commercial banking services as defined in the Bank Act.
8 except:

9 (i) in a case in which fiduciary lending is necessitated by a trust obligation and the depository has
10 obtained a certificate from the department authorizing the depository to act as a trust company or the
11 subsidiary of a trust company; or

12 (ii) in relation to a precious metals account as provided in [sections 25 through 28];

13 (b) transfer \$10,000 or more of a customer's cash on deposit to another financial institution inside
14 or outside the jurisdiction of the United States without submitting a record of the transaction to the
15 commissioner and the attorney general that includes the customer's name, last-known address, and if the
16 customer is an individual, passport number;

17 (c) accept a deposit from a customer who has been convicted of a state or federal crime in the
18 United States or from a corporation of which a controlling person has been convicted of a state or federal
19 crime in the United States.

20

21 **NEW SECTION. Section 24. Sale or trade of deposit accounts prohibited -- transfers allowed.** (1)

22 The legislature does not intend to create or facilitate the creation of a secondary market for depository
23 accounts. Therefore, except for the condition set forth in subsection (2), the sale or trade of a deposit
24 account by a depository is prohibited.

25 (2) A depository may permit the legal transfer of a deposit account from a customer to the
26 customer's heir, spouse, or designated next of kin for the purposes of estate preservation and maintenance.

27

28 **NEW SECTION. Section 25. Precious metals accounts -- purpose.** (1) The legislature

29 acknowledges that:

30 (a) Montana is both a major gold producer and the only domestic source of commercially significant

amounts of platinum and palladium, precious metals that have diverse uses in addition to serving as a store of exchangeable value;

(b) many nonresident aliens and foreign corporations place great value in the security inherent in precious metals as a hedge against currency depreciation, currency devaluation, and general inflation and prefer precious metals over other types of investments that may offer a higher or more certain rate of return;

(c) the expansion of the processing and refining capacity of the platinum and palladium mining operations in Montana's Stillwater complex may provide unique investment opportunities for nonresident aliens and a significant stimulus for economic development in the state; and

(d) helping to establish financial links between customers of the depository and products of the precious metals depository is in the economic interest of the state.

(2) The legislature further recognizes its responsibility to help deter money laundering and other financial crime and therefore acknowledges that restricting the liquidity of a precious metals account will reduce significantly any incentive there may be for a person to use a precious metals account for illicit purposes.

NEW SECTION. Section 26. Definition. For the purposes of [sections 1 through 46], a precious metals account is a depository account in which the depository, upon instructions of a customer, exchanges cash for a commensurately valued amount of platinum, palladium, gold, or silver bullion procured by the depository for the primary purpose of safekeeping over an extended period of time.

NEW SECTION. Section 27. Account requirements -- provisions. (1) An agreement between the depository and a customer to establish a precious metals account must include the following provisions:

(a) a term of maturity that is not less than 36 months;

(b) a penalty for early withdrawal of an amount of precious metals that exceeds 20% of the monetary value of the total amount of precious metals in the account, with the monetary value to be equivalent to the spot market price of the precious metal listed in The Wall Street Journal on the date of the withdrawal;

(c) a requirement that the precious metals purchased by a customer be delivered to the depository within 7 days of verified payment of any part of the purchase price.

(2) A precious metals account may provide for limited withdrawal from the account by means of a debit card or an automatic teller machine card as long as the total amount withdrawn from the account prior to the maturity date established in subsection (1)(a) does not exceed 20% of the total monetary value of the precious metals in the account.

(3) A depository may charge a customer interest and a fee in relation to a cash withdrawal made in accordance with subsection (2).

NEW SECTION. Section 28. Termination -- settlement. (1) Upon termination of a precious metals account, whether at or before the date of maturity, the terms of settlement must allow:

(a) the depository to convert the precious metals to currency at the spot market rate on the day of settlement; and

(b) the depository's right to delay settlement for not more than 5 business days.

NEW SECTION. Section 29. Financial privacy -- purpose. The legislature finds and declares that: (1) the viability of one or more foreign capital depositories in Montana depends to a large extent upon both the secure nature of the depository and the confidential nature of customer accounts and safe deposits in the depository and upon the confidential nature of transactions between a customer and a depository. Therefore, the purpose of [sections 29 through 46] is to clarify and protect the confidential relationship between foreign capital depositories and their customers and to balance a customer's right of privacy with the governmental interest in obtaining information for specific purposes and by specified procedures as set forth in [sections 29 through 46]. The confidential relationship between a foreign capital depository and its customers is to be protected by restrictions on the disclosure of financial records to supervisory agencies and a prohibition against disclosure of financial records to other state and local agencies and to private individuals except under specified conditions.

(2) a state offering secure and confidential depository services to its customers must be mindful that significant amounts of capital are derived from or moved for illegal purposes and that the United States and other jurisdictions have passed laws and worked diligently to prevent money laundering and other offenses from being conducted as part of otherwise lawful transactions;

(3) in licensing and supervising the operation of one or more foreign capital depositories, Montana needs to enforce its own criminal laws vigorously. It is also imperative that Montana cooperate with United

States law enforcement and other authorities to effectively deter and, when deterrence fails, detect, investigate, and prosecute perpetrators of financial crimes.

(4) the purpose of [sections 29 through 46] is not to avoid the application of the Bank Secrecy Act, the Right to Financial Privacy Act of 1978, the Money Laundering Control Act of 1986, and the Annunzio-Wylie Anti-Money Laundering Act, which are intended to prevent or deter money laundering and other financial crimes while maintaining a degree of secrecy of customer bank accounts from federal agencies, but rather to apply state law in those areas unregulated by these and other relevant federal laws. However, it is the intent of the legislature that if there is a clear and direct conflict between [sections 29 through 46] and applicable federal statutes, treaties, or regulations that cannot be resolved by other means, then the state law should be preempted in order to maintain the efficacy and integrity of United States laws intended to combat financial crimes.

NEW SECTION. Section 30. Definitions. Unless the context requires otherwise, in [sections 29 through 46], the following definitions apply:

(1) "Financial institution" includes state and national banks, state and federal savings and loan associations, trust companies, investment companies, and state and federal credit unions. The term does not include a title insurer while engaging in the conduct of the business of title insurance, an underwritten title company, or an escrow company.

(2) (a) "Financial record" means:

(i) an original or copy of a record or document held by a foreign capital depository that directly or indirectly pertains to a customer of the depository;

(ii) information contained in the original or copy of the record or document; or

(iii) the name of a customer.

(b) A record or document may, for the purposes of this subsection (2), be in a paper, electronic, or other format.

(3) "Investigation" includes an inquiry by a peace officer, as defined by 46-1-202, a sheriff, or a county attorney or an inquiry made for the purpose of determining whether there has been a violation of a law enforceable by imprisonment, fine, or monetary liability.

(4) "Local agency" includes a county, city, town, or other local government entity.

(5) "State agency" means an office, department, division, bureau, board, or commission of state

1 government that is not a supervisory agency, including the legislature.

2 (6) "Subpoena" includes subpoena duces tecum.

3
4 **NEW SECTION. Section 31. Request or receipt of records and information prohibited -- exceptions**

5 **-- records to be maintained.** (1) Except as provided in [sections 39 and 40] and this section, an officer,
6 employee, or agent of a state or local agency may not request or receive a copy of a financial record from
7 a foreign capital depository unless the financial record is consistent with the scope and purpose of any
8 investigation by the state or local agency, is described with particularity, and:

9 (a) the customer has authorized disclosure of the financial record in accordance with [section 34];

10 (b) the financial record is disclosed in response to an administrative subpoena that meets the
11 requirements of [section 35];

12 (c) the financial record is disclosed in response to a search warrant that meets the requirements
13 of [section 36]; or

14 (d) the financial record is disclosed in response to a judicial subpoena that meets the requirements
15 of [section 37].

16 (2) The burden of proving that a required disclosure of a financial record is consistent with the
17 scope and purpose of an investigation is upon the state agency or the local agency requiring disclosure of
18 the financial record.

19 (3) Nothing in [sections 34, 35, 36, or 37] or this section requires a foreign capital depository to
20 inquire or determine whether a person seeking disclosure of a financial record has complied with the
21 requirements of those sections if the customer authorization, administrative subpoena, search warrant, or
22 judicial subpoena served upon or delivered to the depository pursuant to any of those sections shows
23 compliance on its face.

24 (4) A foreign capital depository shall maintain for a period of 5 years a record of all disclosures by
25 a depository of the financial records of a customer pursuant to [sections 29 through 46], including the
26 identity of the person examining the financial records, the state or local agency that the person represents,
27 and a copy of the customer authorization, administrative subpoena, search warrant, or judicial subpoena
28 providing for examination or disclosure. A record of disclosures maintained pursuant to this subsection
29 must be available, within 5 days of request, during normal business hours of the depository for review by
30 the customer at the office or branch of the depository where the customer's account or safe deposit box

1 was located when examined. A paper or electronic copy of the record of disclosures must be furnished by
2 the depository to the customer upon request by the customer.

3 (5) This section does not prevent a state or local law enforcement agency from initiating contact
4 with a foreign capital depository if there is reason to believe that the depository is a victim of a crime
5 perpetrated by a customer. After contact by a law enforcement agency, if the foreign capital depository
6 reasonably believes it is a victim of a crime, it may, in its discretion, disclose relevant financial records
7 pursuant to [section 32(2)]. Conviction of or admission by a customer of a crime against the depository
8 is conclusive on the issue of the reasonable belief of the depository.

9
10 **NEW SECTION. Section 32. Disclosure of record to agency prohibited -- exceptions.** (1) Except
11 as provided in [section 40] and this section, a foreign capital depository and a director, executive officer,
12 controlling person, or employee of a foreign capital depository may not provide or authorize another person
13 to provide a financial record to an officer, employee, or agent of a state or local agency.

14 (2) This section does not preclude a foreign capital depository, in its discretion, from initiating
15 contact with and disclosing a relevant financial record to a supervisory agency concerning a suspected
16 violation of state or federal law if the depository reasonably believes that a violation of law has been
17 committed. Conviction of or admission by a customer of a crime is conclusive on the issue of the
18 reasonable belief of the depository.

19
20 **NEW SECTION. Section 33. Disclosure of record to private individual prohibited -- exceptions.** (1)
21 Except as provided in [section 40] and this section, a foreign capital depository and a director, executive
22 officer, controlling person, or employee of a foreign capital depository may not provide or authorize another
23 person to provide a financial record to an individual who is not an officer, employee, or agent of a state or
24 local agency acting pursuant to Montana law or local ordinance or to an officer, employee, or agent of the
25 United States acting pursuant to federal law.

26 (2) This section does not preclude a foreign capital depository, in its discretion, from initiating
27 contact with and disclosing a relevant financial record to an appropriate state, local, or federal agency
28 concerning a suspected violation of state or federal law if the depository reasonably believes that a violation
29 of law has been committed. Conviction of or admission by a customer of a crime is conclusive on the issue
30 of the reasonable belief of the depository.

1 **NEW SECTION. Section 34. Customer authorization -- form -- notice to customer.** (1) A director,

2 executive officer, controlling person, or employee of a foreign capital depository may disclose or authorize
3 another to disclose a financial record and an officer, employee, or agent of a supervisory, state, or local
4 agency may obtain a financial record if the customer to whom the record relates has authorized disclosure
5 of the record on a form provided by the depository that:

6 (a) is signed and dated by the customer;

7 (b) authorizes disclosure for a period set forth in the authorization statement;

8 (c) specifies the name of the person, supervisory agency, state agency, or local agency to whom
9 or to which disclosure is authorized and, if applicable, the statutory purpose for which the information is
10 to be obtained; and

11 (d) identifies the financial record authorized to be disclosed.

12 (2) A foreign capital depository may not require a customer authorization to be signed by a
13 customer as a condition of doing business with the depository.

14 (3) A customer may revoke an authorization by written notice to the foreign capital depository.
15 The notice must contain a copy of the authorization to which it relates or contain the information originally
16 required in the authorization to which it relates, must be signed and dated by the customer, and must
17 contain a clear statement revoking the previous authorization.

18 (4) (a) A supervisory, state, or local agency obtaining a financial record pursuant to a customer
19 authorization shall notify the customer in writing of the receipt of the financial record within 30 days of the
20 agency's receipt of the financial record. However, by application to a judge of a court of competent
21 jurisdiction in the county in which the financial record is located and upon a showing of good cause to
22 believe that disclosure would impede the investigation, the notification requirements of this subsection
23 (4)(a) may be extended for up to two additional 30-day periods. Thereafter, by application to a court upon
24 a showing of extreme necessity for nondisclosure, the notification requirements of this subsection (4)(a)
25 may be extended for up to three additional 30-day periods. At the end of that period or periods, the agency
26 shall inform the customer that the customer has the right to make a written request as to the reason why
27 the agency obtained the record. The notice must specify the financial record that was obtained and, if
28 requested, the reason why the record was obtained.

29 (b) Whenever practicable, an application for an additional extension of the notification time
30 provided in subsection (4)(a) must be made to the judge who granted the first extension of notification time.

1 In deciding whether to grant an extension of the notification time, the judge shall provide the customer with
2 prompt notification, consistent with the purpose of [sections 29 through 46].

3
4 **NEW SECTION. Section 35. Administrative subpoena.** (1) A director, executive officer, controlling
5 person, or employee of a foreign capital depository may disclose or authorize another to disclose a financial
6 record and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial
7 record under [section 31(1)(b)] pursuant to an administrative subpoena otherwise authorized by law and
8 served upon the foreign capital depository only if:

9 (a) the person issuing the administrative subpoena has served a copy of the subpoena on the
10 customer pursuant to Rule 4D of the Montana Rules of Civil Procedure;

11 (b) the subpoena includes the name of the agency in whose name the subpoena is issued and the
12 statutory purpose for which the record is to be obtained; and

13 (c) 10 days have passed after service of the subpoena without the foreign capital depository or
14 the customer moving to quash the subpoena.

15 (2) (a) The supervisory, state, or local agency issuing the administrative subpoena may not shorten
16 or waive the requirements of subsection (1). However, the agency may petition a court of competent
17 jurisdiction in the county in which the record is located, and the court, upon a showing of a reasonable
18 inference that a law enforceable by the petitioning agency has been or is about to be violated, may order
19 that service upon the customer pursuant to subsection (1)(a) or the 10-day period provided for in
20 subsection (1)(c) be waived or shortened.

21 (b) For the purpose of this subsection (2), an "inference" is a deduction that may reasonably be
22 drawn by the attorney general or the county attorney from facts relevant to the investigation.

23 (c) The petition may be presented to the court in person or by telephoned oral statement, which
24 must be recorded and transcribed. In the case of telephonic petition, the recording of the sworn oral
25 statement and the transcribed statement must be certified by the judge receiving it and must be filed with
26 the clerk of the court.

27 (3) Except as provided in subsection (2) and this subsection, a foreign capital depository shall
28 immediately notify a customer of the receipt of an administrative subpoena for a financial record of that
29 customer. A court may order a depository to withhold notification to a customer of the receipt of an
30 administrative subpoena when the court issues an order pursuant to subsection (2) and makes a finding

1 that notice to the customer by the financial institution would impede the investigation.

2
3 **NEW SECTION. Section 36. Search warrants.** A director, executive officer, controlling person,
4 or employee of a foreign capital depository may disclose or authorize another to disclose a financial record
5 and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial record
6 under [section 31(1)(c)] only if the officer, employee, or agent obtains a search warrant pursuant to Title
7 46, chapter 5, part 2. Examination of a financial record may occur as soon as the warrant is served upon
8 the foreign capital depository. A foreign capital depository shall notify a customer of the receipt of a search
9 warrant unless a court orders the depository to withhold notification to the customer upon a written finding
10 that notice would impede the investigation.

11
12 **NEW SECTION. Section 37. Judicial subpoena.** (1) A director, executive officer, controlling
13 person, or employee of a foreign capital depository may disclose or authorize another to disclose a financial
14 record and an officer, employee, or agent of a supervisory, state, or local agency may obtain a financial
15 record under [section 31(1)(d)] pursuant to a judicial subpoena only if one of the following has occurred:

16 (a) the subpoena is issued as otherwise authorized by law and served in compliance with Rule 4D
17 of the Montana Rules of Civil Procedure and the requirements of subsections (1)(b), (1)(c), or (1)(d) have
18 been met. In the event that actual service on the customer is not prohibited but has not been made prior
19 to the time the financial record is required to be produced in response to the subpoena, the court shall, prior
20 to turning over a record to the agency and upon good cause shown, make a finding that due diligence has
21 been exercised by the agency in its attempt to effect service upon the customer.

22 (b) 10 days have passed after service of the subpoena on the customer and the depository without
23 the customer or the depository having moved to quash the subpoena;

24 (c) the subpoena has been served upon the customer and the depository and a judge in a judicial
25 proceeding to which the customer or the depository is a party rules that the subpoena should not be
26 quashed. This subsection (1)(c) is not intended to preclude appellate remedies that may be available under
27 existing law.

28 (d) the subpoena has been served upon the depository and a court orders that service of the
29 subpoena upon the customer be delayed in accordance with this section. Service may be delayed for up
30 to 30 days from the date of issuance of the judicial subpoena after the court makes a finding upon a written

showing that service upon the customer would impede the investigation. The withholding of notification may be extended for additional 30-day periods if a court makes a finding upon a written showing, at the time of each extension, that service upon the customer would impede the investigation. Whenever practicable, an application for an extension of time must be made to the judge who issued the judicial subpoena. In deciding whether to grant an extension of the notification time, the judge shall endeavor to provide the customer with prompt notification, consistent with the purpose of [sections 29 through 46].

(2) If testimony is to be taken concerning a financial record or if a financial record is to be produced before a court, the 10-day period provided for in subsection (1)(b) may be shortened by the court upon a showing of good cause. The court shall direct that all reasonable measures be taken to notify the customer within the shortened time period. The motion to quash the subpoena must be made, whenever practicable, in the judicial proceeding pending before the court.

(3) (a) A grand jury, upon resolution adopted by a majority of its members, may obtain financial records pursuant to a judicial subpoena based upon a written showing to a judge that there exists a reasonable inference that a crime within the jurisdiction of the grand jury has been committed and that the financial record sought is reasonably necessary to the jury's investigation of that crime. The judicial subpoena must be personally signed and issued by a judge in accordance with 46-4-301 and must otherwise comply with the requirements of this section.

(b) For the purpose of this subsection (3), an "inference" is a deduction that may be reasonably drawn by the grand jury from facts relevant to the investigation.

(4) A showing required to be made pursuant to this section, as well as the court record of any finding made pursuant to the showing, must be sealed until one person named in the indictment to which the showing related has been arrested or until the end of the term of the grand jury if no indictment to which the showing relates has been returned. However, a court may unseal the showing and the court record relating to the showing on a written showing of good cause.

NEW SECTION. **Section 38. Grounds for quashing subpoena -- duty of depository.** (1) A customer or a foreign capital depository has 10 days after service of an administrative or judicial subpoena upon either of them to file a motion to quash the subpoena before the administrative agency issuing the subpoena or a court with jurisdiction over the subpoena. The motion to quash may be based upon one or more of the following grounds:

1 (a) the financial record sought is incompetent, irrelevant, or immaterial for the purpose for which
2 it is sought;

3 (b) the release of the financial record would cause an unreasonable burden or hardship under the
4 circumstances upon the customer or the depository;

5 (c) the supervisory, state, or local agency or other person seeking the financial record is attempting
6 to harass the customer or the depository;

7 (d) there is no merit in the purpose for which the financial record is sought; or

8 (e) the supervisory, state, or local agency or other person has not made a reasonable effort to first
9 obtain the financial record or the equivalent of the record from some other source other than the depository,
10 if some other source exists.

11 (2) A foreign capital depository shall move on the basis of all appropriate grounds, including those
12 set forth in subsection (1), to quash an administrative or judicial subpoena if the customer or the agent of
13 the customer to whom the record relates has not received actual notice of the subpoena. If a foreign
14 capital depository cannot determine from the customer or the customer's agent whether the customer or
15 the agent has received actual notice of the subpoena, the depository shall move to quash the subpoena
16 unless the customer and the depository have agreed in writing to the contrary.

17 (3) Failure of the customer or the depository to file a motion to quash the subpoena before the time
18 established for the return of the subpoena constitutes a waiver of the right to object to the release or
19 disclosure of the financial record.

20 (4) During the period for the filing of a motion to quash and continuing until a ruling is made upon
21 a motion to quash, the depository shall, unless prohibited by the court, make available to its customer a
22 copy of the subpoenaed financial record and shall preserve the original record without alteration.

23 (5) If a depository or a customer files a motion to quash an administrative or judicial subpoena
24 issued pursuant to [section 35 or 37], the proceeding must be afforded priority on the calendar of the
25 agency or the court.

26 (6) A depository may charge a customer a fee for the reasonable cost of representing the interests
27 of the customer pursuant to this section.

28
29 **NEW SECTION. Section 39. Limitations on use of financial record.** (1) The original or a copy of
30 a financial record obtained by a state or local agency or another person pursuant to [sections 29 through

46] may not be used or retained in any form for a purpose other than the statutory purpose for which the record was originally obtained. The statutory purpose must be determined with reference to the statute, rule, or other law sought to be enforced in the proceeding for which the record was obtained.

(2) A state or local agency may not provide a financial record obtained pursuant to [sections 29 through 46] to another state or local agency unless the other agency has independently obtained authorization to receive the financial record pursuant to [sections 29 through 46]. This subsection does not prohibit:

(a) the transfer by one supervisory agency that obtained a financial record pursuant to [section 40(1)(c)] to another supervisory agency or supervisory agencies if that transfer otherwise complies with subsection (1); or

(b) the transfer of a financial record obtained pursuant to [section 36] by one criminal justice agency to another criminal justice agency in accordance with the Montana Criminal Justice Information Act of 1979.

(3) A supervisory, state, or local agency or a court obtaining a financial record by administrative subpoena, search warrant, or judicial subpoena shall, at the request of a customer or foreign capital depository, provide for the in camera review of the record to determine whether the record contains material that is not expected to be the subject of the investigation, inquiry, or proceeding. The supervisory, state, or local agency or the court shall liberally grant requests for in camera hearings, protective orders, and other appropriate processes to protect the confidential nature of a financial record. The agency or court may permit public disclosure of a financial record only if it finds that disclosure is necessary for the fair resolution of an issue before it.

(4) Documents of a supervisory, state, or local agency and documents produced in court containing a financial record must be sealed by the agency or court at the conclusion of the proceedings in order to prevent access to the record and may be opened only for good cause shown.

NEW SECTION. Section 40. Authorized disclosures of financial records. (1) [Sections 29 through 46] do not prohibit:

(a) disclosure by a foreign capital depository of a financial record that is not identified with or identifiable as being derived from a financial record of a particular customer by name;

(b) disclosure by a foreign capital depository to a department, agency, office, bureau, or

1 commission of the United States of a financial record when required by federal statute or regulation or when
2 required pursuant to the terms of a treaty or other agreement between the United States and the
3 government of a foreign country;

4 (c) disclosure of a financial record by a foreign capital depository to a supervisory agency when
5 the disclosure is conducted in response to an exercise of the agency's supervisory function. The scope of
6 an agency's supervisory function must be determined by reference to statutes granting authority to
7 examine, audit, or require reports concerning a financial record or foreign capital depository.

8 (2) Whenever the request, order, demand, or other requirement for disclosure of a financial record
9 prohibits the release to a customer of the facts of a disclosure, a foreign capital depository may not disclose
10 either the fact or nature of the request, order, demand, or other requirement for disclosure or the
11 depository's response to a customer or to any other person, except the officers and employees of the
12 depository who are involved in responding to the request and to attorneys, auditors, and regulatory
13 authorities who have a need to know in order to perform their duties and except as disclosure may be
14 required by legal process.

15
16 **NEW SECTION. Section 41. Fee paid to foreign capital depository for disclosure of record.** Except
17 for a supervisory agency, a state agency or local agency obtaining a financial record in accordance with
18 [section 34, 35, 36, or 37] shall pay to the depository providing the financial record a reasonable fee
19 commensurate with the depository's costs of searching for, assembling, copying, labeling, and transporting
20 the financial record in question.

21
22 **NEW SECTION. Section 42. Confidentiality -- supervisory agency personnel -- penalty for violation.**
23 (1) Except as required by judicial order or as otherwise provided by [section 13 and sections 29 through
24 46], an employee of a supervisory agency who conducts an examination, investigation, or audit of a
25 depository or who receives a report or another type of information about a depository from another
26 employee of a supervisory agency may not disclose the identity of a customer to another person who is
27 not officially associated with an examination, investigation, or audit of a depository.

28 (2) A person who knowingly violates subsection (1) must be removed from office and is guilty of
29 a felony. Upon conviction, the person shall be punished by a fine of \$10,000, by imprisonment in the state
30 prison for not more than 10 years, or by both fine and imprisonment.

NEW SECTION. Section 43. Civil liability for wrongful disclosure of financial record -- damages

and injunctive relief. (1) A state or local agency that requests or receives a financial record in violation of [sections 29 through 46] is liable to the customer to whom the record relates in the amount of damages provided in subsection (4).

(2) A person who is not employed by a supervisory, state, or local agency or by a foreign capital depository and who requests or receives a financial record in violation of [sections 29 through 46] is liable to the customer to whom the record relates in the amount of damages provided in subsection (4).

(3) A director, executive officer, controlling person, or employee of a foreign capital depository who discloses or authorizes another to disclose a financial record in violation of [sections 29 through 46] is liable to the customer to whom the record relates in an amount of damages provided in subsection (4).

(4) Damages are equal to the sum of the following:

(a) \$10,000, without regard to the type or number of records involved;

(b) actual damages sustained by the customer; and

(c) costs incurred in the action to successfully enforce liability under this section, together with reasonable attorney fees.

(5) A foreign capital depository may exercise remedies provided in this section on behalf of a customer and in connection with the exercise of those remedies may act as the real party in interest. Damages recovered by the depository must be deposited in an account of the customer, but a depository may retain amounts recovered for its costs and reasonable attorney fees.

(6) The remedies provided in this section are not exclusive.

(7) In addition to any other remedy allowed by law, a customer may bring an action for injunctive relief under Title 27, chapter 19, to enforce the provisions of [sections 29 through 46].

NEW SECTION. Section 44. Unlawful disclosure of financial record -- criminal penalties. (1) A

director, executive officer, controlling person, or employee of a foreign capital depository who discloses a financial record in violation of [sections 29 through 46] is guilty of a misdemeanor and upon conviction shall be punished by a fine of not more than \$5,000, by imprisonment in the state prison for not more than 1 year, or by both fine and imprisonment. This subsection imposes absolute liability.

(2) A director, executive officer, controlling person, or employee of a foreign capital depository or an officer, employee, or agent of a state or local agency who knowingly discloses a financial record in

1 violation of [sections 29 through 46] is guilty of a felony and upon conviction shall be punished by a fine
2 of \$10,000, by imprisonment in the state prison for not more than 10 years, or by both fine and
3 imprisonment.

4
5 **NEW SECTION. Section 45. Customer waiver invalid.** A waiver by a customer of a right that is
6 not authorized to be waived by [sections 29 through 46] is not valid whether granted with or without
7 consideration.

8
9 **NEW SECTION. Section 46. Limitation of actions.** An action to enforce a provision of [sections
10 29 through 46] must be commenced within 3 years after the date on which the violation occurred.

11
12 **NEW SECTION. Section 47. Asset protection -- purpose and perspective.** (1) The legislature
13 understands that asset protection includes the ability to minimize or avoid both the potential financial impact
14 and loss of privacy resulting from lawsuits. The legislature also recognizes that asset protection is a vital
15 component of a foreign capital depository, as defined in [section 3], that is designed to serve the interests
16 of high net worth individuals who are not U.S. citizens and do not reside in the United States.

17 (2) The legislature further acknowledges that foreign judgments rendered in a foreign state are,
18 unlike judgments rendered in other states of the union under the United States constitution, not entitled
19 by Montana courts to conclusive full faith and credit under common law and that the principle of comity
20 that encourages one country to extend legal recognition to the judicial acts of another country does not
21 apply to the relations between Montana and a foreign country.

22 (3) The Uniform Foreign Money-Judgments Recognition Act, Title 25, chapter 9, part 6, signifies
23 a departure from comity because it codifies the principles of comity but with certain exceptions and
24 modifications. [Sections 47 through 55] enact a further departure from comity that is intended to uphold
25 the state's interest in extending to a customer of a foreign capital depository the maximum amount of
26 privacy possible within prudential limits as well as state and federal law.

27 (4) [Sections 47 through 55] are not intended to circumscribe or conflict with the provisions of Title
28 25, chapter 9, part 5 or 6, except in a case in which a foreign judgment has been obtained against the
29 customer of a foreign capital depository.

1 **NEW SECTION. Section 48. Definitions.** Unless the context requires otherwise, in [sections 47
2 through 55], the following definitions apply:

3 (1) "Comity" means the recognition of judicial acts that one country extends to another as a matter
4 of custom, convenience, and expediency.

5 (2) "Foreign judgment" has the same meaning as defined in 25-9-602.

6 (3) "Foreign state" has the same meaning as defined in 25-9-602.

7
8 **NEW SECTION. Section 49. Defense against enforcement of foreign judgments -- depository**
9 **obligations.** A foreign capital depository shall, unless relieved of the responsibility by a waiver signed by
10 a depository customer, provide a customer with competent legal counsel and defense against:

11 (1) the recognition in Montana of a foreign judgment rendered in a foreign state as provided in
12 25-9-605; and

13 (2) the execution of a foreign judgment in Montana pursuant to Title 25, chapter 13, or Title 25,
14 chapter 14, but only to the extent that the execution would affect the customer's assets in the depository.

15
16 **NEW SECTION. Section 50. Filing fee.** A person seeking recognition of a foreign judgment
17 rendered in a foreign state against a customer of the foreign capital depository shall pay a filing fee of
18 \$2,500 to the clerk of the court in which the judgment is filed.

19
20 **NEW SECTION. Section 51. Policy statement.** For the purposes of [sections 47 through 55], the
21 legislature declares that the recognition of a foreign judgment pursuant to Title 25, chapter 9, part 6, and
22 the execution of a foreign judgment against a customer of a foreign capital depository is repugnant to the
23 public policy of the state if either would:

24 (1) facilitate the arbitrary or unlawful interference with an individual's privacy in contravention of
25 international law;

26 (2) undermine the individual right of privacy and the right to private property provided for in the
27 Montana constitution and state law;

28 (3) stimulate or engender lawsuits motivated by greed or pecuniary speculation and lacking a good
29 faith argument or other legally sound purpose;

30 (4) facilitate civil prosecution arising from class or ethnic hatred and nurtured by a corrupt legal

1 system; or

2 (5) threaten the financial stability of the depository or the state by discouraging foreign depositors
3 and investors from becoming customers or by encouraging customers to withdraw their capital from the
4 depository.

5
6 **NEW SECTION. Section 52. Burden of proof -- financial liabilities.** (1) A person seeking
7 recognition of a foreign judgment pursuant to part 6 bears the burden of proving that:

8 (a) the judgment was rendered under a system that provides impartial tribunals or procedures that
9 are compatible with the requirements of due process of law;

10 (b) the foreign court had personal jurisdiction over the customer when the judgment was rendered;
11 and

12 (c) the foreign court had jurisdiction over the subject matter.

13 (2) The customer or the foreign capital depository acting on behalf of a customer bears the burden
14 of proving that any one of the grounds for nonrecognition provided for in 25-9-605(2) exist.

15 (3) If the court finds that the person seeking recognition of the foreign judgment has failed to prove
16 the judgment valid in accordance with subsection (1) or if the customer or the depository succeeds
17 pursuant to subsection (2), the court may not recognize the foreign judgment.

18 (4) If the person seeking recognition of a judgment under part 6 is unsuccessful in obtaining
19 recognition of the judgment, that person shall pay the court costs and attorney fees for the parties opposing
20 recognition or, if the customer has waived the depository's obligation provided for in [section 49], for the
21 customer.

22
23 **NEW SECTION. Section 53. Damages -- in camera hearing.** (1) The court in which recognition of
24 a foreign judgment is sought may award damages against the person seeking recognition of a foreign
25 judgment to compensate a customer for the customer's loss of privacy.

26 (2) The amount of the damages awarded pursuant to subsection (1) must bear a reasonable
27 relationship to the person's ability to pay and may not exceed \$1 million.

28 (3) Any part of a hearing necessary to determine the rights and obligations of the parties pursuant
29 to [sections 47 through 55] and part 6 may be held in camera to protect the privacy of any of the parties.

30

1 **NEW SECTION.** **Section 54. Contingency fee arrangements prohibited.** A person seeking
2 recognition of a foreign judgment against a customer of a foreign capital depository may not engage legal
3 counsel on a contingency fee basis for the purpose of attaining recognition of the same foreign judgment.
4

5 **NEW SECTION.** **Section 55. Nonrecognition -- procedures to protect privacy.** (1) The court shall,
6 at the request of a customer or a foreign capital depository, provide for an in camera review of the pertinent
7 documents to protect the confidential nature of financial records.

8 (2) The court may permit public disclosure of a financial record or proceedings closed pursuant to
9 subsection (1) only if it finds that disclosure is necessary for the fair resolution of an issue before it.

10 (3) Documents produced in court containing a financial record must be sealed by the court at the
11 conclusion of the proceedings to prevent access to the record and may be opened only for good cause
12 shown.
13

14 **NEW SECTION.** **Section 56. State revenue from depository -- purpose and preference.** (1) The
15 legislature recognizes that revenue gains to the state and the possibility of subsequent tax reduction for
16 Montana taxpayers are among the most significant reasons for establishing a statutory framework for the
17 foreign capital depository, as defined in [section 3], and that a relatively steady, predictable flow of revenue
18 is preferable to a volatile one. The legislature also acknowledges that the depository is subject to
19 competitive pressures in the international financial services market. It is therefore in the state's interest to
20 balance revenue expectations with incentives that will enhance the commercial attractiveness and viability
21 of a depository.

22 (2) The legislature recognizes the hazards of fortune that may be suffered by customers of a
23 depository who are citizens or residents of countries with unstable or repressive governments and
24 recognizes that capital in a depository may be abandoned as a consequence of a customer's disappearance
25 or untimely death. It is in the state's interest to provide a decent interval of time before determining that
26 capital is abandoned and, in keeping with subsection (1), to allow a depository to charge a reasonable fee
27 for the maintenance of the abandoned capital prior to its escheatment to the state.
28

29 **NEW SECTION.** **Section 57. Tax status -- exemption guarantees.** (1) A foreign capital depository
30 is exempt from the corporation license tax as provided in 15-31-102 until October 1, 2012.

(2) A transaction between the depository and a customer that involves tangible personal property, as defined in [section 3], is exempt from all forms of tax.

NEW SECTION. Section 58. State revenue -- assessment -- collection -- distribution. (1) A foreign capital depository shall pay to the department on June 15 and December 15 of each year a fee that is equal to 1.25% of the total value of assets on deposit or in a safe deposit box. The total annual rate of assessment is 2.5%.

(2) The basis of the value ascribed to each asset is:

(a) the U.S. dollar exchange value of the currency on deposit on the date of assessment;

(b) the spot market price of the platinum, palladium, gold, or silver held in precious metals accounts, as defined in [section 26], as published in The Wall Street Journal on the date of assessment; or

(c) the market value of other tangible personal property held in safe deposit boxes or other accounts at the time of the assessment, as determined by the depository using a method approved by the department. The depository shall submit to the department within 60 days of the appraisal a report that documents the method and calculations of the appraisal.

(3) The semiannual assessment fee must be deposited into the general fund.

NEW SECTION. Section 59. Revenue audits -- charges. (1) The department shall conduct an annual audit of a foreign capital depository to verify that internal financial records of the depository comply with state law and regulations pertaining to the depository and that fees owed to the state have been properly calculated and paid on time.

(2) A depository shall pay to the department the cost of an annual audit provided for in subsection (1).

(3) The department may charge the depository up to \$400 a day for each auditor involved in the conduct of an audit.

NEW SECTION. Section 60. Deficiency assessment -- notice -- penalty and interest. (1) If the department determines through an audit of a foreign capital depository that the amount collected pursuant to [section 59] is less than the amount owed by the depository, the department shall send by certified mail

1 to the depository a notice of the deficiency and require payment of the amount owed plus a 10% penalty
2 within 60 days of the depository's receipt of the notice.

3 (2) The depository must bear the interest charge on any deficiency assessment issued by the
4 department in accordance with subsection (1). The rate of interest charged to the depository may not
5 exceed 12% a year.

6
7 **NEW SECTION. Section 61. Right of appeal.** A foreign capital depository that receives a notice
8 of deficiency assessment may appeal the amount of the fee, penalty, or interest charged in accordance with
9 15-2-201.

10
11 **NEW SECTION. Section 62. Limitation on penalty and interest.** An amount of penalty or interest
12 owed by the depository pursuant to [section 60] may not be assessed or collected with respect to the year
13 for which a semiannual fee is assessed unless the notice of the additional amount owed is mailed within
14 5 years from the date the fee was paid.

15
16 **NEW SECTION. Section 63. Action by attorney general.** An action may be brought by the
17 attorney general in the name of the state at the request of the department to recover the amount of any
18 fees, penalties, and interest due under [sections 58 through 61].

19
20 **NEW SECTION. Section 64. Abandoned capital -- disposition -- escheatment.** (1) A foreign capital
21 depository, as defined in [section 3], shall presume that capital on deposit in a depository account is
22 abandoned in accordance with the provisions of 70-9-201.

23 (2) A depository shall dispose of the abandoned capital in the manner provided for in this chapter,
24 except that:

25 (a) a notice of the property presumed abandoned may not be published as prescribed in 70-9-302;

26 (b) the record of deposit required under 70-9-309 may not be made available for public inspection;

27 and

28 (c) all money received by the department of revenue as a consequence of the abandonment of
29 capital in a depository must be deposited in the general fund.

30 (3) A foreign capital depository may deduct from property that is presumed to be abandoned a

1 charge imposed by reason of the owner's failure to claim the property within a specified time only if there
2 is a valid and enforceable written contract between the depository and the owner under which the
3 depository may impose the charge and if the depository regularly imposes the charge, which is not regularly
4 reversed or otherwise canceled. The amount of the deduction is limited to an amount that is not
5 unconscionable.

6
7 **NEW SECTION. Section 65. Injunctions.** The department may institute and maintain in the name
8 of the state actions for injunctive relief as provided in Title 27, chapter 19, to:

9 (1) enjoin a violation of [sections 1 through 46], a rule adopted pursuant to [sections 1 through
10 46], the terms or conditions of a charter, or an order of the department or the board; or

11 (2) require compliance with [sections 1 through 46], a rule adopted pursuant to [sections 1 through
12 46], the terms or conditions of a charter, or an order of the department or the board.

13
14 **NEW SECTION. Section 66. Civil penalties.** (1) Except for the penalties for wrongful disclosure
15 provided for in [section 43], a person who violates a provision of [sections 1 through 46], a rule adopted
16 under [sections 1 through 46], the terms and conditions of a charter or an order of the department or the
17 board is subject to a civil penalty not to exceed \$10,000 for each day of violation. Each day of violation
18 of [sections 1 through 46], a rule adopted under [sections 1 through 46], the terms or conditions of a
19 charter, or an order constitutes a separate violation.

20 (2) The department may institute and maintain in the name of the state any enforcement
21 proceedings under this section. Upon request of the department, the attorney general or the county
22 attorney of the county where the violation occurred shall petition the district court to impose, assess, and
23 recover the civil penalty.

24 (3) Action under this section does not bar:

25 (a) enforcement of [sections 1 through 46], rules adopted under [sections 1 through 46], orders
26 of the department or the board, or terms or conditions of a charter by injunction or other appropriate
27 remedy; or

28 (b) action under [section 67].
29

30 **NEW SECTION. Section 67. Criminal penalties.** (1) Except for the penalties for wrongful disclosure

provided for in [section 44], a person who knowingly operates a foreign capital depository without a charter, in violation of the terms or conditions of a charter, or in violation of [sections 1 through 46], a rule adopted pursuant to [sections 1 through 46], or an order of the department or board or a person who knowingly makes any false statements or representations in an application, report, or other document filed or maintained as required by [sections 1 through 46] or required by rules adopted under [sections 1 through 46] is subject to a fine not to exceed \$10,000 for each violation or imprisonment not to exceed 6 months, or both. Each day of violation constitutes a separate violation.

(2) A person convicted of a second or subsequent criminal violation is subject to a fine not to exceed \$20,000 for each violation or imprisonment not to exceed 1 year, or both. Each day of a violation constitutes a separate violation.

(3) Action under this section does not bar enforcement of [sections 1 through 46], rules adopted under [sections 1 through 46], orders of the department or the board, or terms or conditions of a charter by injunction or other appropriate remedy.

Section 68. Section 15-1-501, MCA, is amended to read:

"15-1-501. Disposition of money from certain designated license and other taxes. (1) The state treasurer shall deposit to the credit of the state general fund in accordance with the provisions of subsection (6) all money received from the collection of:

(a) fees from driver's licenses, motorcycle endorsements, and duplicate driver's licenses as provided in 61-5-121;

(b) electrical energy producer's license taxes under chapter 51;

(c) liquor license taxes under Title 16;

(d) telephone company license taxes under chapter 53; and

(e) inheritance and estate taxes under Title 72, chapter 16; and

(f) fees based on the value of currency on deposit and tangible personal property held for safekeeping by a foreign capital depository as provided in [section 58].

(2) All money received from the collection of income taxes under chapter 30 of this title must, in accordance with the provisions of subsection (6), be deposited as follows:

(a) 91.3% of the taxes to the credit of the state general fund;

(b) 8.7% of the taxes to the credit of the debt service account for long-range building program

1 bonds as described in 17-5-408; and

2 (c) all interest and penalties to the credit of the state general fund.

3 (3) All money received from the collection of corporation license and income taxes under chapter
4 31 of this title, except as provided in 15-31-702, must, in accordance with the provisions of subsection
5 (6), be deposited as follows:

6 (a) 89.5% of the taxes to the credit of the state general fund;

7 (b) 10.5% of the taxes to the credit of the debt service account for long-range building program
8 bonds as described in 17-5-408; and

9 (c) all interest and penalties to the credit of the state general fund.

10 (4) The department of revenue shall also deposit to the credit of the state general fund all money
11 received from the collection of license taxes and fees and all net revenue and receipts from all other sources
12 under the operation of the Montana Alcoholic Beverage Code.

13 (5) Oil and natural gas production taxes allocated under 15-36-324(7)(a) must be deposited in the
14 general fund.

15 (6) Notwithstanding any other provision of law, the distribution of tax revenue must be made
16 according to the provisions of the law governing allocation of the tax that were in effect for the period in
17 which the tax revenue was recorded for accounting purposes. Tax revenue must be recorded as prescribed
18 by the department of administration, pursuant to 17-1-102(2) and (5), in accordance with generally
19 accepted accounting principles.

20 (7) All refunds of taxes must be attributed to the funds in which the taxes are currently being
21 recorded. All refunds of interest and penalties must be attributed to the funds in which the interest and
22 penalties are currently being recorded."

23
24 **Section 69.** Section 15-31-101, MCA, is amended to read:

25 **"15-31-101. Organizations subject to tax.** (1) The term "corporation" includes associations,
26 joint-stock companies, common-law trusts and business trusts which do business in an organized capacity,
27 and all other corporations whether created, organized, or existing under and pursuant to the laws,
28 agreements, or declarations of trust of any state, country, or the United States.

29 (2) The terms "engaged in business" and "doing business" both mean actively engaging in any
30 transaction for the purpose of financial or pecuniary gain or profit.

(3) Except as provided in 15-31-103 or 33-2-705(4) or as may be otherwise specifically provided, every corporation engaged in business in the state of Montana shall annually pay to the state treasurer as a license fee for the privilege of carrying on business in this state ~~such the~~ percentage or percentages of its total net income for the preceding taxable year at the rate ~~hereinafter~~ set forth in this chapter. In the case of corporations having income from business activity which is taxable both within and ~~without~~ outside of this state, the license fee ~~shall~~ must be measured by the net income derived from or attributable to Montana sources as determined under part 3. Except as provided in 15-31-502, this tax is due and payable on the 15th day of the 5th month following the close of the taxable year of the corporation; ~~however,~~ However, the tax becomes a lien as provided in this chapter on the last day of the taxable year in which the income was earned and is for the privilege of carrying on business in this state for the taxable year in which the income was earned.

(4) Every bank organized under the laws of the state of Montana, of any other state, or of the United States and every savings and loan association organized under the laws of this state or of the United States is subject to the Montana corporation license tax provided for under this chapter. A foreign capital depository chartered under the laws of Montana is not subject to the Montana corporation license tax provided for under this chapter until October 1, 2012. For taxable years beginning on and after January 1, 1972, this subsection is effective in accordance with Public Law 91-156, section 2 (12 U.S.C. 548)."

Section 70. Section 15-31-102, MCA, is amended to read:

"15-31-102. Organizations exempt from tax -- unrelated business income not exempt. (1) Except as provided in subsection (3), there ~~shall~~ may not be taxed under this title any income received by any:

(a) labor, agricultural, or horticultural organization;

(b) fraternal beneficiary, society, order, or association operating under the lodge system or for the exclusive benefit of the members of a fraternity itself operating under the lodge system and providing for the payment of life, sick, accident, or other benefits to the members of ~~such the~~ society, order, or association or their dependents;

(c) cemetery company owned and operated exclusively for the benefit of its members;

(d) corporation or association organized and operated exclusively for religious, charitable, scientific, or educational purposes, no part of the net income of which inures to the benefit of any private stockholder or individual;

1 (e) business league, chamber of commerce, or board of trade not organized for profit and no part
2 of the net income of which inures to the benefit of any private stockholder or individual;

3 (f) civic league or organization not organized for profit but operated exclusively for the promotion
4 of social welfare;

5 (g) club organized and operated exclusively for pleasure, recreation, and other nonprofitable
6 purposes, no part of the net income of which inures to the benefit of any private stockholder or members;

7 (h) farmers' or other mutual hail, cyclone, or fire insurance company, mutual ditch or irrigation
8 company, mutual or cooperative telephone company, or ~~like~~ similar organization of a purely local character,
9 the income of which consists solely of assessments, dues, and fees collected from members for the sole
10 purpose of meeting its expenses;

11 (i) cooperative association or corporation engaged in the business of operating a rural electrification
12 system or systems for the transmission or distribution of electrical energy on a cooperative basis;

13 (j) corporations or associations organized for the exclusive purpose of holding title to property,
14 collecting income ~~therefrom~~ from property, and turning over the entire amount ~~thereof~~ of income, less
15 expenses, to an organization which itself is exempt from the tax imposed by this title;

16 (k) wool and sheep pool, which is an association owned and operated by agricultural producers
17 organized to market association members' wool and sheep, the income of which consists solely of
18 assessments, dues, and fees collected from members for the sole purpose of meeting its expenses. Income,
19 for this purpose, does not include expenses and money distributed to members contributing wool and
20 sheep;

21 (l) corporation that qualifies as a domestic international sales corporation (DISC) under the
22 provisions of section 991, et seq., of the Internal Revenue Code and that has in effect for the entire taxable
23 year a valid election under federal law to be treated as a DISC. If a corporation makes such an election
24 under federal law, each person who at any time is a shareholder of ~~such~~ the corporation is subject to
25 taxation under Title 15, chapter 30, on the earnings and profits of this DISC in the same manner as
26 provided by federal law for all periods for which the election is effective.

27 (m) farmers' market association not organized for profit and no part of the net income of which
28 inures to the benefit of any member, but is organized for the sole purpose of providing for retail distribution
29 of homegrown vegetables, handicrafts, and other products either grown or manufactured by the seller;

30 (n) foreign capital depository chartered under the provisions of [sections 4, 8, and 9].

(2) In determining the license fee to be paid under this part, there ~~shall~~ may not be included any earnings derived from any public utility managed or operated by any subdivision of the state or from the exercise of any governmental function.

(3) Any unrelated business income, as defined by section 512 of the Internal Revenue Code, 1954, as amended, earned by any exempt corporation resulting in a federal unrelated business income tax liability of more than \$100 ~~shall~~ must be taxed as other corporation income is taxed under this title. An exempt corporation subject to taxation on unrelated business income under this section must file a copy of its federal exempt organization business income tax return on which it reports its unrelated business income with the department of revenue."

Section 71. Section 25-9-506, MCA, is amended to read:

"25-9-506. **Fees.** (1) Except as provided for in subsection (2), Any a person filing a foreign judgment shall pay to the clerk of court a fee of \$60.

(2) a person filing a judgment against a customer of a foreign capital depository, as defined in [section 3], shall pay to the clerk of court a fee of \$2,500.

(3) Fees for docketing, transcription, or other enforcement proceedings must be as provided for judgments of the district court."

Section 72. Section 25-9-603, MCA, is amended to read:

"25-9-603. **Applicability.** This part applies to any foreign judgment, other than a judgment obtained against a customer of a foreign capital depository, as defined in [section 3], that is final and conclusive and enforceable where rendered even though an appeal from the judgment is pending or it is subject to appeal."

Section 73. Section 25-9-609, MCA, is amended to read:

"25-9-609. **Uniformity of interpretation.** This Except for the provisions in [sections 47 through 55] pertaining to a customer of a foreign capital depository, as defined in [section 3], this part must be construed to effectuate the general purpose to make uniform the law of those states that enact it."

Section 74. Section 32-1-101, MCA, is amended to read:

1 **"32-1-101. Short title -- application -- purpose.** (1) Parts 1 through 5 of this chapter ~~shall~~ may be
2 known as the "Bank Act".

3 (2) The ~~bank-act~~ Bank Act is applicable to:

4 (a) all corporations and persons specified in 32-1-102;

5 (b) corporations that subject themselves to the ~~bank-act~~ Bank Act; and

6 (c) persons, partnerships, or corporations who by violating the ~~bank-act~~ Bank Act become subject
7 to the penalties provided in the ~~bank-act~~ Bank Act; and

8 (d) foreign capital depositories, but only to the extent that the provisions of the Montana Foreign
9 Capital Depository Act, [sections 1 through 46 and 65 through 67], specifically require foreign capital
10 depositories to be subject to provisions of the Bank Act.

11 (3) (a) The purpose of the ~~bank-act~~ Bank Act is to provide Montana with a sound system of
12 state-chartered banks by providing for and encouraging the development of state-chartered banks while
13 restricting their activities to the extent necessary to protect the interests of depositors. The purpose
14 includes:

15 (i) the sound conduct of the business of banks;

16 (ii) the conservation of bank assets;

17 (iii) the maintenance of adequate reserves against deposits;

18 (iv) the opportunity for banks to compete with other businesses, including but not limited to other
19 financial organizations existing under the laws of this state, other states, the United States, and foreign
20 countries;

21 (v) the opportunity for banks to serve the citizens of this state;

22 (vi) the opportunity for banks to participate in and promote the economic progress of Montana and
23 the United States;

24 (vii) the opportunity for the management of banks to exercise business judgment in conducting the
25 affairs of their institutions; and

26 (viii) modernization and simplification of the law governing banking by providing that banks have
27 all the rights and powers granted corporations, except as otherwise provided in this chapter.

28 (b) The ~~bank-act~~ Bank Act does not restrict the activities of banks for the purpose of protecting
29 any person from competition from banks and does not confer any right or cause of action upon any
30 competitor.

(c) The purpose contained in this subsection (3) constitutes the standards to be observed by the commissioner of banking and financial institutions in the exercise of authority under the ~~bank act~~ Bank Act and provides guidelines in the construction and application of the ~~bank act~~ Bank Act."

Section 75. Section 32-1-102, MCA, is amended to read:

"32-1-102. Institutions to which chapter is applicable. (1) The word "bank" as used in this chapter means any corporation, other than a foreign capital depository, as defined in [section 3], which that has been incorporated to conduct the business of receiving money on deposit or transacting a trust or investment business, as defined in this chapter.

(2) The soliciting, receiving, or accepting of money or its equivalent on deposit as a regular business is doing a commercial or savings bank business, except for the operations of a foreign capital depository, whether such the deposit is made subject to check or is evidenced by a certificate of deposit, a passbook, a note, or other receipt, ~~provided that nothing herein applies.~~ This section does not apply to or ~~includes~~ include money or its equivalent left in escrow or left with an agent pending investment in real estate or securities for or on account of ~~his~~ the agent's principal.

(3) It is unlawful for any corporation, partnership, firm, or individual to engage in or transact a banking business within this state except by means of a corporation duly organized for ~~such that~~ purpose.

(4) Banks are divided into the following classes:

(a) commercial banks;

(b) savings banks;

(c) trust companies;

(d) investment companies.

(5) This chapter does not apply to any investment company or corporation established prior to March 8, 1927, under authority of the law of Montana not accepting, receiving, or holding money on deposit.

(6) Except for the provisions listed in [section 6], this chapter does not apply to foreign capital depositories."

Section 76. Section 32-1-202, MCA, is amended to read:

"32-1-202. Powers and duties of board. The board shall:

(1) make final determinations upon applications for certificates of authorization for foreign capital depositories, new banks, branch banks, sales of branch banks, mergers, consolidations, and relocations of banks and branch banks;

(2) act in an advisory capacity with respect to the duties and powers given by statute or otherwise to the department as the duties and powers relate to banking and to the regulation of foreign capital depositories."

Section 77. Section 32-1-301, MCA, is amended to read:

"32-1-301. Organization and incorporation -- articles of incorporation. (1) A person desiring to organize a banking corporation or a foreign capital depository shall make and file articles of incorporation with the department and, upon approval by the department, may file the articles with the secretary of state as provided in Title 35, chapter 1. The articles of incorporation must set forth:

(a) the information required by 35-1-216(1);

(b) the name of the city or town and county in which the principal office of the corporation or foreign capital depository is to be located;

(c) the names and places of residence of the initial shareholders and the number of shares subscribed by each;

(d) the number of the board of directors and the names of those agreed upon for the first year; and

(e) the purpose for which the banking corporation or foreign capital depository is formed, which may be set forth by the use of the general terms defined in this chapter, with reference to each line of business in which the proposed corporation or foreign capital depository desires to engage.

(2) In addition to provisions required in subsection (1), the articles of incorporation may also contain provisions set forth in 35-1-216(2).

(3) A banking corporation or foreign capital depository may not adopt or use the name of any other banking corporation or association or foreign capital depository, and the corporation name must comply with 35-1-308(2) through (4).

(4) A banking corporation or a foreign capital depository may not be organized or incorporated until the articles of incorporation have been submitted to and have been approved by the department and until it has obtained a certificate from the board authorizing the proposed corporation or foreign capital depository to transact the business specified in the articles of incorporation within this state.

(5) A banking corporation or a foreign capital depository may not amend or restate its articles of incorporation until its articles of amendment or articles of restatement have been submitted to and have been approved by the department and until it has obtained approval from the department authorizing the proposed amendment or restatement.

(6) For banks organized before October 1, 1993, articles of agreement are considered articles of incorporation."

Section 78. Section 32-1-446, MCA, is amended to read:

"32-1-446. Safe deposit department. A bank or a foreign capital depository may conduct a safe deposit department. The liability of any bank or foreign capital depository for the safekeeping and protection of the contents of safety deposit boxes is determined by the contract endorsed on the receipt delivered to the renter of a box at the time of the rental, ~~but in any event.~~ However, the obligation of the bank or foreign capital depository is limited to the exercise of ordinary diligence and care to protect the contents of the box from loss or damage by fire, theft, or other causes."

Section 79. Section 32-1-461, MCA, is amended to read:

"32-1-461. Bonding of employees. (1) The board of directors of ~~every~~ a bank or foreign capital depository shall require ~~that~~ bonding for all officers and employees of ~~banks~~ the bank or foreign capital depository whose duty includes the handling of ~~moneys~~ money, notes, bonds, credits, and cash items and whose duties include bookkeeping or the making of entries in relation to the business of the bank and its customers ~~be bonded~~.

(2) The board of directors shall by order entered upon the minute books of the board designate the officers and employees to be bonded and the amount of bonds to be given. ~~Such action~~ Action as to the personnel, the amount of bonds, and the surety company or sureties is subject to approval by the department, and the bonds ~~shall~~ must be in ~~such~~ a form ~~as is~~ provided or approved by the department.

(3) The bonds ~~shall~~ must be approved by the president of the bank or the chief executive officer of the foreign capital depository, and ~~his~~ the president's or executive officer's action must be reported to the board of directors.

(4) All bonds required by this section ~~shall~~ must be kept in the custody of the bank or foreign capital depository subject to inspection by examiners from the department; ~~provided,~~ However, as far as

possible, they may not be placed in the custody of the officer or employee for whom the ~~same~~ bond is given."

Section 80. Section 32-1-462, MCA, is amended to read:

"32-1-462. Persons previously convicted under banking laws -- bank or depository employment.

It ~~shall be~~ is unlawful for ~~anyone having a person who has~~ been convicted of ~~the violations~~ a violation of the banking laws of any state or nation to accept employment in a bank or a foreign capital depository in this state without first stating ~~said~~ the relevant facts to the directors of ~~said~~ the bank or foreign capital depository. ~~No such person shall~~ A person who has been convicted of a banking law violation may not be employed in ~~any~~ a bank or a foreign capital depository without the approval of the department, granted in writing after a full consideration of the facts."

Section 81. Section 32-1-464, MCA, is amended to read:

"32-1-464. Fraud by director, officer, agent, or employee. A director, executive officer, agent, or employee of a bank or a foreign capital depository is guilty of a felony if that person:

(1) knowingly receives or ~~possesses himself of any of its property, otherwise than~~ takes possession of any bank or foreign capital depository property, except in payment for a just demand, and with intent to defraud:

(a) ~~omits~~ fails to make or to cause or direct to be made a full and true entry of ~~it~~ the receipt or possession in its books and account; or

(b) concurs in ~~omitting~~ failing to make any material entry ~~thereof~~ in its books and account;

(2) knowingly concurs in making or publishing any written report, exhibit, or statement of its affairs or pecuniary condition containing any material statement ~~which~~ that is false; or

(3) having the custody or control of its books, willfully refuses or neglects to make a proper entry in the books of that ~~corporation~~ bank or foreign capital depository as required by law, to exhibit them, or allow them to be inspected and extracts to be taken from them by the department."

Section 82. Section 32-1-468, MCA, is amended to read:

"32-1-468. Removal of directors, officers, or employees. ~~Any~~ A director, officer, or employee of ~~any~~ a bank or foreign capital depository who is found by the department, after examination, to be negligent,

1 dishonest, reckless, or incompetent ~~shall~~ must be removed from office by the board of directors of ~~such~~
2 the bank or depository on the written order of the department, ~~and if~~. If the directors neglect or refuse to
3 remove ~~such the~~ director, officer, or employee, ~~in event~~ and any losses accrue to ~~such the~~ bank thereafter
4 by reason of the negligence, dishonesty, recklessness, or incompetency of ~~such the~~ director, officer, or
5 employee, ~~such the~~ written order of the department ~~shall be deemed to be~~ is conclusive evidence of the
6 negligence of the directors failing to act ~~upon the same~~ as ~~herein~~ provided in this section in any action
7 brought against them, ~~or any of them~~, by a depositor or creditor for recovery of ~~such~~ losses."

8
9 **Section 83.** Section 32-1-473, MCA, is amended to read:

10 **"32-1-473. Theft of bank funds by directors, officers, or employees.** ~~Any banker, officer, A~~
11 ~~director, officer, or employee of any a~~ bank or foreign capital depository who fraudulently appropriates or
12 abstracts or misapplies any of the ~~moneys~~ money, funds, credits, or property of the bank or depository
13 when owned by it or held in trust, ~~or who~~ issues or puts forth any certificate of deposit, draws any order
14 or bill of exchange, makes any acceptance, assigns any note, bond, draft, bill of exchange, mortgage,
15 judgment, or decree with intent ~~in any case~~ to injure or defraud the bank or depository or any person or
16 corporation or to deceive any officer of the bank or depository, ~~or~~ any other person, or anyone appointed
17 to examine the affairs of the bank or depository or any other person who with like intent, aids or abets any
18 director, officer, clerk, or employee in the violation of this section is guilty of theft and upon conviction
19 ~~thereof~~ shall be imprisoned in the state prison for a period of not ~~exceeding to exceed~~ 20 years or be fined
20 an amount not ~~exceeding to exceed~~ \$50,000, or both."

21
22 **Section 84.** Section 32-1-491, MCA, is amended to read:

23 **"32-1-491. Destruction of bank records.** (1) Banks and foreign capital depositories are required
24 to preserve or keep their records of customer accounts for at least 8 years ~~next~~ after January 1 of the year
25 following the time ~~of that~~ the ~~making of such~~ records; ~~provided, however, that~~ are made. However, records
26 showing unpaid balances in favor of depositors of ~~any banks shall~~ a bank or foreign capital depository may
27 not be destroyed. ~~No liability shall~~ Liability may not accrue against ~~any a~~ a bank or depository destroying any
28 ~~such~~ records (except records ~~the of which~~ destruction of which is forbidden ~~hereby~~ by this section) after
29 the expiration of the time provided in this section.

30 (2) The department shall adopt rules providing for retention schedules for bank records other than

those records listed in subsection (1)."

Section 85. Section 32-1-492, MCA, is amended to read:

"32-1-492. Reproduction of bank records -- admissibility in evidence. (1) Except as provided in subsection (5), Banks banks are hereby authorized to make, at any time, photographic or photostatic copies or microfilm reproductions of any records or documents, including photographic enlargements and prints of microfilms, and to preserve, store, use, and employ the ~~same~~ copies in carrying on business.

(2) In ~~any~~ an action or ~~proceedings~~ proceeding in which ~~any~~ bank records may be called in question or be demanded of ~~any~~ a bank or any officer or employee ~~thereof~~ of a bank, a showing that ~~such~~ the records have been destroyed in the regular course of business ~~shall be~~ is a sufficient excuse for the failure to produce them.

(3) Upon ~~such~~ sufficient showing, secondary evidence of the form, text, and contents of the original records, including photostatic, photographic, or microfilm reproductions ~~thereof~~ of the records (and photographic enlargements and prints of microfilm reproductions), when made in the regular course of business, ~~shall be~~ is admissible in evidence in any court of competent jurisdiction or in any administrative proceeding.

(4) Any photostatic, photographic, or microfilm reproductions (including enlargements of the latter) made in the regular course of business of any original files, records, books, cards, tickets, deposit slips, or memoranda ~~which that~~ which were in existence on July 1, 1951, ~~shall be~~ are admissible in evidence in proof of the form, text, and content of ~~any said~~ the originals ~~which may be that were~~ that were destroyed in the regular course of business after July 1, 1951.

(5) The reproduction of records of a foreign capital depository is subject to the provisions of [sections 29 through 46]."

Section 86. Section 32-1-501, MCA, is amended to read:

"32-1-501. Dissolution and disincorporation. Commercial banks, savings banks, trust companies, ~~and~~ investment companies, and foreign capital depositories may be dissolved in the manner provided by the laws of this state applicable to the dissolution of other corporations. However, a bank, ~~or~~ trust company, or foreign capital depository may, upon a vote of two-thirds of its stockholders at a special meeting called for that purpose in accordance with its bylaws, voluntarily quit business and liquidate upon

the payment of its debts, exclusive of liability to stockholders, or upon agreement with all of its creditors to a plan of liquidation. A bank, ~~or~~ trust company, or foreign capital depository that wishes ~~desiring~~ to voluntarily liquidate shall apply to the department for permission to ~~se~~ liquidate and, in addition to complying with the laws of this state governing the liquidation of corporations, shall comply in all respects with the requirements or rules of the department governing voluntary dissolution. The board of directors of a bank, trust company, or foreign capital depository whose stockholders have voted to place it in voluntary liquidation shall appoint a liquidating agent to wind up the affairs of the bank, trust company, or foreign capital depository. The liquidating agent, on authority of the board of directors, may execute deeds for the transfer of real property and do all things necessary to carry out the proper liquidation of the bank, trust company, or foreign capital depository. Nothing in this section prevents the department from taking charge at any time when in its opinion the interest of creditors or stockholders is not being protected. The decision of the department in these matters is controlling."

NEW SECTION. Section 87. Severability. If a part of [this act] is invalid, all valid parts that are severable from the invalid part remain in effect. If a part of [this act] is invalid in one or more of its applications, the part remains in effect in all valid applications that are severable from the invalid applications.

NEW SECTION. Section 88. Codification instruction. (1) [Sections 1 through 46 and 65 through 67] are intended to be codified as an integral part of Title 32, and only those provisions of Title 32 identified in [sections 1 through 46 and 65 through 67] as applicable to [sections 1 through 46 and 65 through 67] apply to [sections 1 through 46 and 65 through 67].

(2) [Sections 47 through 55] are intended to be codified as an integral part of Title 25, chapter 9, and the provisions of Title 25, chapter 9, apply to [sections 47 through 55].

(3) [Sections 56 through 63] are intended to be codified as an integral part of Title 15, chapter 31, and the provisions of Title 15, chapter 31, apply to [sections 56 through 63].

(4) [Section 64] is intended to be codified as an integral part of Title 70, chapter 9, and the provisions of Title 70, chapter 9, apply to [section 64].

NEW SECTION. Section 89. Termination. [Sections 57 and 58] terminate September 30,

1 2012.

-END-

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0083, as introducedDESCRIPTION OF PROPOSED LEGISLATION:

An act creating a new class of financial institution to be called "foreign investment depositories"; establishing procedures for chartering and regulating the institutions; establishing operating authorities and procedures for the institutions; granting rulemaking authority to the Department of Commerce; and amending various sections of existing law.

ASSUMPTIONS:

1. There will be only one such financial institution applying for a "foreign investment depository" during the biennium and the charter application will be filed during fiscal year 1998.
2. The charter application will be reviewed by the Department of Commerce (DOC) during fiscal year 1998.
3. Section 9 of the bill allows the state banking board to authorize the commissioner to perform background checks on directors, officers or controlling persons of the institution to determine their character. It is assumed background checks will be performed on three foreign residents and four U.S. residents during fiscal year 1998.
4. The public hearing on the charter application will be held early in fiscal year 1999.
5. The institution will be controlled by a foreign bank holding company.
6. Because of the late opening of the institution, no examinations will be performed, no new FTE will be required and no significant deposits will be made during the biennium.
7. Section 7 of the bill requires the DOC to develop rules. This will be done during fiscal year 1998. While no additional FTE are anticipated for the promulgation of administrative rules, existing staff will have to be redirected from other duties. These costs are not funded and will be borne by revenue generated by other programs. The Financial Institutions Division estimates these costs at \$6,749 in fiscal year 1998 and \$1,505 in fiscal year 1999.
8. Estimated operating expenses are \$32,590 in fiscal year 1998 and \$2,884 in fiscal year 1999. Estimated operating expenses include legal fees and rulemaking costs, printing, board member travel and per diem, and background check charges.
9. A foreign capital depository will pay the DOC a fee equal to 1.25% of the total value of assets on deposit or in a safe deposit box every 6 months. No significant collections are expected in the biennium due to the time that will be necessary to open such a depository.

FISCAL IMPACT:

Department of Commerce, Division of Banking and Financial Institutions:

	<u>FY98</u>	<u>FY99</u>
<u>Expenditures:</u>	<u>Difference</u>	<u>Difference</u>
Personal Services	6,749	1,505
Operating Expenses	<u>32,590</u>	<u>2,884</u>
Total	39,339	4,389

Revenues:

Fee Income (02)	5,000	50,000
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Net Impact on Fund Balance (revenue - expenditures):

Banking and Financial SSR (02)	(34,339)	45,611
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(Continued)

Dave Lewis 1-10-97
 DAVE LEWIS, BUDGET DIRECTOR DATE
 Office of Budget and Program Planning

Mike Sprague 1-13-97
 MIKE SPRAGUE, PRIMARY SPONSOR DATE

Fiscal Note for SB0083, as introduced**SB 83**

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Depending on the number and size of foreign investment depositories chartered, there may be a need for additional FTE and equipment to accomplish the required supervision over the institutions. Possible revenue benefits to the state are extremely uncertain and cannot be estimated with acceptable degrees of accuracy. Any potential revenues will depend on the number of depositories and the popularity of their services.

TECHNICAL NOTES:

Section 8 of the bill provides for a fee of \$5,000 to accompany an application for a foreign investment depository charter. As estimated above, this fee is unlikely to cover the DOC's costs related to the analysis, review and consideration of the application and there is a potential for a substantial loss for each application that is denied. The largest potential expense category is for background investigations of officers, directors and controlling persons of the applicant. The state of New York requires similar background checks for applicants for certain types of charters. The difference is that the background checks are to be provided by the applicant and are to be performed by a licensed private investigator.

The bill does not give the DOC any authority to review or approve changes in ownership control of the institution. Such reviews are performed for commercial banks by the federal bank regulatory agencies and are acceptable to the department. Since federal bank regulators will not necessarily be involved in the supervision of institutions formed under the provisions of this bill, it is important that the department be given the responsibility to review and approve or deny proposed changes in ownership control, to the same extent that review and approval is required for the original owners of the institution. Lacking such authority could allow an institution to fall under the control of individuals or entities that lack one or more desirable ownership characteristics.

STATE OF MONTANA - FISCAL NOTE

Fiscal Note for SB0083, 2nd reading, 2nd house

DESCRIPTION OF PROPOSED LEGISLATION:

An act authorizing the chartering of foreign capital depositories; providing for the rights of financial privacy, asset protection, and specialized services to nonresident aliens who are depository customers; establishing the Department of Commerce as the regulating authority; mandating compliance with certain federal banking laws; providing for a new source of state revenue derived on an assessment based on the value of assets on deposit; amending numerous sections, MCA; and providing effective dates and a termination date.

ASSUMPTIONS:

Department of Commerce/Financial Institutions Division

1. SB0083 requires the Financial Institutions Division and the State Banking Board to adopt rules to implement, administer, enforce, and regulate foreign capital depositories. Application, administration, enforcement, and renewal fees will be set by rule of the State Banking Board and must be commensurate with costs. For the purposes of this fiscal note it is assumed that FY98 and FY99 expenses will be \$1 million annually. Estimated costs include, legal and banking consultant fees, rule making costs, background checks, and administrative and enforcement costs.
2. Section 17 of SB0083 creates a foreign capital depository account for the Department's use in meeting its administrative, supervisory, and regulatory obligations. Since there will be no money in this state special revenue account on July 1, 1997 the Department anticipates requesting a general fund loan to pay SB0083 implementation costs estimated at \$100,000. Subsequent foreign capital depository revenues will be used to repay the general fund loan.
3. There will be two such financial institutions applying for a foreign investment depository charter during FY98 and FY99. It is assumed the two FY98 charter applications will be filed between October 1, 1997 and December 31, 1997 and the applicants will become chartered on March 1, 1998 with deposits totaling \$400 million dollars. It is assumed the two FY99 charter applications will be received on July 1, 1998 and the applicants will become chartered on October 1, 1998 with deposits totaling \$400 million.
4. Section 58 of SB0083 requires a 0.75% semi-annual assessment on the total value of assets held by the foreign investment depositories be deposited in the general fund. Estimated revenues are \$1.5 million for FY98 and \$10.5 million for FY99.

FISCAL IMPACT:

Department of Commerce
Financial Institutions Division:

Expenditures:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Administrative Expenses	1,000,000	1,000,000
Total	1,000,000	1,000,000

(Continued)

Dave Lewis 4-8-97

DAVE LEWIS, BUDGET DIRECTOR DATE
Office of Budget and Program Planning

MIKE SPRAGUE, PRIMARY SPONSOR DATE

Fiscal Note for SB0083, 2nd reading,
2nd house

CR 83 #2

Revenues:

	<u>FY98</u>	<u>FY99</u>
	<u>Difference</u>	<u>Difference</u>
Fee Income (02)	1,000,000	1,000,000
Foreign Depository Assessments (01)	1,500,000	10,500,000
Total	2,500,000	11,500,000

Net Impact:

General Fund (01)	1,500,000	10,500,000
Banking & Financial SSR	0	0

EFFECT ON COUNTY OR OTHER LOCAL REVENUES OR EXPENDITURES:

LONG-RANGE EFFECTS OF PROPOSED LEGISLATION:

Depending on the number and size of foreign investment depositories chartered, there may be a need for additional FTE and equipment to accomplish the required supervision over the institutions.

MINUTES

**MONTANA SENATE
55th LEGISLATURE - REGULAR SESSION
COMMITTEE ON BUSINESS & INDUSTRY**

Call to Order: By **CHAIRMAN JOHN HERTEL**, on January 22, 1997, at 9:00 a.m., in Room 410.

ROLL CALL

Members Present:

Sen. John R. Hertel, Chairman (R)
Sen. Steve Benedict, Vice Chairman (R)
Sen. Debbie Bowman Shea (D)
Sen. William S. Crismore (R)
Sen. C.A. Casey Emerson (R)
Sen. Bea McCarthy (D)

Members Excused: None

Members Absent: None

Staff Present: Bart Campbell, Legislative Services Division
Mary Gay Wells, Committee Secretary

Please Note: These are summary minutes. Testimony and discussion are paraphrased and condensed.

Committee Business Summary:

Hearing(s) & Date(s) Posted: SB 83; 1/13/97
Executive Action: SB 83; SB 56; SB 80;
(SB 17 & SB 39 Tabled)

HEARING ON SB 83

Sponsor: SENATOR MIKE SPRAGUE, SD 6, BILLINGS

Proponents: John Cadby, MT Bankers Assoc.

Opponents: None

{Tape: 1; Side: A; Approx. Time Count: 9:00 AM; Comments: N/A.}

Opening Statement by Sponsor:

SENATOR MIKE SPRAGUE, SD 6, BILLINGS. I bring you SB 83. This bill came about in the last session (1995) and was introduced as Senate Joint Resolution 19. It was to go to the full Legislature for prioritizing in sub-committees to study the feasibility of

creating Montana as a depository state. It was called The Foreign Investment Depository. The words have been changed and moved around. We now call ourselves the Senate Joint Resolution Subcommittee on The Foreign Capital Depository. The word investment had connotations that some were uncomfortable with so it is now capital. We are encouraging foreigners to bring their assets to a depository in Montana for which the State of Montana will derive revenue. I would like to pass out a series of questions, answers and comments that you may look at (EXHIBIT 1).

The Foreign Capital Depository committee was a bi-partisan effort. Our findings came out on time, under budget and unanimous. Many of the committee members had a lot of skepticism going in and were united coming out. The report is substantial and there are copies available for those who desire one. I would like to make it clear that this is not a bank. Therefore, it cannot be put in the same parameters. It is new for Montana and new for North America. There are offshore banking facilities in other countries, but not here. Our goal is to create what we would like to think of as a snow white depository for the Treasure State of Montana.

We have had interest in this type of a depository. With the stability of our federal government and of our currency, others in not so stable a country have expressed an interest in depositing their assets in our country. The point of this bill is to create an attraction for foreign capital to be deposited here in Montana and this capital would not be ill-gotten gain or laundered money. We have made a special effort in this bill to discourage that as best we can. This is a good bill for Montana and in turn for Montanans. **Stephen Maly** from the Legislative Council is here to answer specific questions concerning this bill.

Proponents' Testimony: None

Informational Testimony:

John Cadby, MT Bankers Assoc. We have simply served as a resource in providing the subcommittee with information when requested and tried to aid them in their research and study in this project. We don't have a position for or against the proposed legislation. We do have an amendment that our council in researching the bill proposed. (EXHIBIT 2) It simply makes it clear that the depository would only serve non-resident aliens; it would not serve any U.S. citizen or Montana citizen. That is clear throughout the bill. It meets, I believe, the approval of the sponsor.

Opponents' Testimony: None

Questions From Committee Members and Responses:

SENATOR BENEDICT asked what the inducement would be for a foreigner to park a large chunk of their assets in a depository account here in Montana. He also asked if a depository pays interest?

Mr. Stephen Maly replied that a depository is not designed as a money-making instrument for the customer, although it would provide opportunities for the customer to make money through very limited investment possibilities in tax-exempt instruments. That is one avenue they can take. The main motive for a foreign person to put money in this type of an institution is its location, remembering that these types of people are extremely wealthy (there is a minimum deposit of \$200 thousand) and who have their assets spread around the world in money-making adventures. It is a safe country. No one is going to steal their money, appropriate it or tax it. Secondly, they can use the opportunity to avoid paying what they would consider onerous taxes in their home country. France, for example, is a very, very highly taxed country. We don't feel that many would come from the advanced, industrialized democracies like France, but there are countries like Taiwan and Turkey where there are very wealthy people and their wealth is very much at risk. One of the features of the depository that would make it unique in the world as well as in the U.S. is the potential to merge financial capital with holdings of platinum made in Montana. That is one of the ways that they can protect the value of their monetary assets in a depository by investing them in platinum, gold, etc. which has a pretty steady rate of appreciation. This is not a part of the bill--the state would not be engaging in this transaction.

SEN. CASEY EMERSON asked what the depository might yield for the State of Montana?

SEN. SPRAGUE answered that he remembered well that they had tried to project what the potential gain would be for Montana. The best projection was if they could raise \$200 billion on deposit, they might be able to come up with the goal of \$1 billion a year. As this process has evolved some other analysis has come by. For example, if 10% of all current offshore banking facilities decided to use Montana for 10% of their asset diversification, we could be looking at \$1 trillion on deposit and our legislation has not proposed a 1% fee but in fact a 2.5% fee which is a marketable, comparable value for this kind of service. We are talking sizeable revenue relatively to income to the State of Montana.

{Tape: 1; Side: A; Approx. Time Count: 9:20 AM; Comments: N/A.}

SEN. BEA MCCARTHY asked that if this legislation passes, will you, **SEN. SPRAGUE**, go through the steps of how this legislation will be set up. **SEN. SPRAGUE** deferred the question to **Mr. Maly**.

Mr. Maly stated that the process would be engaged with rule making primarily early on by the Board of Banking and also by the Department of Commerce. The Board of Banking would have the responsibility of writing rules that govern how a charter is to be issued. The bill specifically states how a corporation would qualify to obtain this charter, but the Board of Banking has the additional responsibility to fill in details. One of the most important rule-making functions of the Board has to do with determining the identity of the persons obtaining the charter. Identity checks would be made on those people who seek to obtain the charter. The charter seekers are not necessarily non-resident aliens. The most likely seekers of a charter would be major, transnational banking institutions that would likely establish a subsidiary here in Montana for this purpose. A new corporation could also be formed for this purpose. Much investigation would be done on these people to be sure they were not crooks.

Once the rules of how the charter would be issued, there would be rules to establish how the institution would run itself. Again, one of the key considerations is designing and implementing a "know your customer" policy. I am focusing on these elements because most of the objections raised earlier on had to do with attracting money launderers and other types of financial criminals. The bill is replete with design elements that are there to deter those people.

Once the rules are established and published and once a charter is sought, the Department of Commerce has the responsibility to regulate, examine and supervise the institution as they do banks. The federal government would not have any oversight of this institution unless it is a foreign bank that wants to establish a corporation, a subsidiary, in Montana. In that instance alone, the Federal Reserve System is the overall regulator. The bill requires the institution to comply with all the requirements of the Bank Secrecy Act which is a federal law which was designed to curtail money laundering. The IRS would also have a roll in making sure this institution is complying with federal law.

SEN. MCCARTHY continued with the question of where would this depository be situated. **Mr. Maly** responded that the charter corporation would choose a site that would be conducive to their clientele. A very sizeable vault would be a necessity.

CHAIRMAN JOHN HERTEL inserted a question about why would people deposit money here in Montana and what is in our law here in Montana that would allow this depository and not in other states?

Mr. Maly responded that in Montana Constitution we have a right of privacy provision. We are not unique in that regard. There are about 8 or 9 other states that have basically the same provision. In the arena of individual financial records, there are significant court cases that have been tried that indicate that that provision in our Constitution does not protect anyone's

financial records from discovery, from inquiries, etc. However, there are very strict restrictions on gaining access to personal financial records in federal law. There is a federal privacy act that is actually more powerful than our own state's right to privacy.

CHAIRMAN HERTEL then stated that if this bill was passed, would it not be challenged as far as the Montana State Constitution was concerned.

Mr. Maly stated that on a Constitutional basis, it would address equal protection. This is an unusual construct in that it is providing privileges to non-resident aliens exclusively. Since Americans may not make use of this institution, an American might take issue with this and try to bring it to court and say that this is unfair. They might just want to test the logic or they may want to destroy this kind of institution legally.

{Tape: 1; Side: A; Approx. Time Count: 9:32 AM; Comments: N/A.}

SEN. DEBBIE SHEA asked what would foreigners have to do in the operation of this institution. **Mr. Maly** answered "none" unless they were partners in the charter of the depository.

SEN. BENEDICT asked if the federal government would be able to get their hands on some of the tax revenue coming to Montana? **Mr. Maly** replied that he could not envision how they would go about that. **SEN. BENEDICT** then asked if there were any other state doing this kind of thing. **Mr. Maly** answered "no". New York is doing something analogous to this.

SEN. EMERSON asked if the 2.5% is feasible and if it might not be possible to have the freedom to make an adjustment. **Mr. Maly** said "no" because that 2.5% rate is set in statute. It would have to be changed by the Legislative body to a different rate. **Mr. Maly** handed out (EXHIBIT 3) to show what type of revenue might be gained predicated on different volumes of deposit. The chart simply shows what kind of money would come into the state using a fee of .5% up to 2.5%.

SEN. MCCARTHY asked about Section 22 which covers the depository services. It looked to her like a regular catalog of normal banking services rather than what she would envision in depository. In particular, line 6, #G which says they would issue a debit card and an ATM card to their clients.

Mr. Maly explained that the institution may not engage in lending. The provision for a debit card is the exception to that in that the depository might charge interest on what they might consider a temporary loan, even though it is not a loan because the client has the assets on deposit. It is not a loan but they could charge interest on it. These people are not looking for liquidity, but they might like access to some portion of their assets if they needed it. The use of a debit card would be the

easiest way for them to do this. The institution would not be lending as banks do.

SEN. WILLIAM CRISMORE asked if there had been anyone contacting this group who was interested in the charter of the depository?

Mr. Maly responded that there had been a lot of contact with international banks and major U.S. banks and also major trust companies. Because the U.S. Treasury Dept. does not like this and because it is controversial, those who had shown interest declined to participate so they would not be seen too soon by the Feds. There has been an inquiry over the phone and they sounded interested and we have had some correspondence.

{Tape: 1; Side: B; Approx. Time Count: 9:47 AM; Comments: N/A.}

SEN. BENEDICT stated that the bill could set up a limited number of these charter depositories and asked if this were correct?

Mr. Maly responded that that is correct.

SEN. BENEDICT followed on with a question concerning the fiscal note and asked **Mr. Maly** to highlight important items in this fiscal note. **Mr. Maly** replied that there are a couple of inaccuracies that are worth noting. Number 9, on Page 1 states that the Foreign Capital Depository will pay the Department of Commerce a fee equal to 1 1/4% of the total value of the assets. None of that money goes to the Department of Commerce. All the money based on volume of assets goes to the General Fund and the Revenue Department collects that money twice a year. However, the DOC collects fees from applicants and from charter holders. There is a \$5,000 application fee. There is a \$50,000 initial charter fee and a renewal fee of \$10,000 or less thereafter. The idea was for the process to pay for itself. But the revenue generated will go to the General Fund.

On the back of the fiscal note, continued **Mr. Maly**, under the first paragraph, Long Range Effects of Proposed Legislation, the last line, "any potential revenues will depend on the number of depositories and the popularity of their services" BUT it will really depend on the number of customers and the volume of assets placed on deposit or in vaults. There could be one depository or there could be 50, but the thing that is going to generate revenue are the customers and how much they are willing to put into the depository.

On the last paragraph under Technical Notes, **Mr. Maly** said that he didn't quite understand completely, but that his understanding was, even though this bill is excepted from many provisions of the States Bank Act, it also falls under many provisions of the Bank Act especially in regard to dissolution of the Institution. There is a specific provision in the bill that prohibits someone from trading their ownership in the Depository.

SEN. MCCARTHY stated that there was a provision in the bill for selling the charter. On page 12, Section 20, it reads that the sale or transfer of charter is prohibited and there is a penalty.

SEN. EMERSON stated that under the "Assumptions" in the Fiscal Note, under number one, there will be only one financial institution applying for a foreign investment depository. He then asked if the idea is to take the first accepted charter through the courts to find out how it would go in Montana.

Mr. Maly replied that yes, this is unusual and an experiment. It is unlikely that many charter seekers would come banging on the door.

CHAIRMAN HERTEL stated that due to the fact that the Banking Board is the entity that has the rule-making authority, they are really going to be the ones involved in this. Could someone tell us the make up of that institution?

Annie Bartos, Chief Legal Council of the Department of Commerce. The Banking Board is quite advised by the Governor's office. It consists of seven members. The Chairman is Tom Ryan, Hamilton; representatives who are bankers from national banks as well as state charter institutions, Doug Morton, Kalispell, Banker; Skip Baxter, Thompson Falls, Banker; Jerry Wiedebush, Plentywood, Banker; Loren Tucker, Virginia City, County Attorney, Madison County; Shirley Gierke, Miles City.

{Tape: 1; Side: B; Approx. Time Count: 9:56 AM; Comments: N/A.}

Closing by Sponsor:

SEN. SPRAGUE closed. Thank you for a good hearing. There is a lot to learn and the bill should make good night reading. I would appreciate your support in this bill primarily because I feel that it is important for Montana to stand united in the process and send a clear message that we are open for business even in the international arena.

{Tape: 1; Side: B; Approx. Time Count: 10:09 AM; Comments: N/A.}

EXECUTIVE ACTION ON SB 83

Amendment Motion: **SEN. STEVE BENEDICT** moved to AMEND SB 83.

Vote on Amendment: The motion to amend SB 83 CARRIED UNANIMOUSLY.

Motion: **SEN. BENEDICT** moved SB 83 DO PASS AS AMENDED. (EXHIBIT 4)

Discussion: **SEN. CASEY EMERSON** suggested that the 2.5% is set very high and sounds a bit greedy. He feels there should be more freedom in the bill for negotiation.

Vote: The DO PASS AS AMENDED for SB 83 CARRIED UNANIMOUSLY.

THE FOREIGN CAPITAL DEPOSITORYA Summary of Basic Features

- ☐ The depository is not a bank. It is not a lending institution. It will not compete with Montana financial institutions engaged in retail banking. It may be owned and operated by a Montana bank, another U.S. banks, or a foreign bank, and it may be connected to offshore financial institutions.
- ☐ The depository will be chartered (licensed) by the state banking board and examined by the department of commerce. The department of revenue will perform tax audits.
- ☐ The charter will offer limited financial privacy, asset protection, and profit-making investment opportunities. From the foreign customer's point of view, the main attraction to the depository will be its safe and secure location in the United States. Another may be platinum as an appreciating store of value.
- ☐ The depository will comply with federal transaction reporting and recordkeeping requirements. Violations of certain federal laws will also be violations of state law.
- ☐ The depository will not provide services to Montanans or any other U.S. citizen. It is exclusively for non-resident aliens.
- ☐ The depository will target very wealthy people. The minimum deposit amount is \$200,000.
- ☐ The depository will be a "clean" institution, not a laundry for dirty money. It will have the right to refuse any prospective client and the obligation to know its customers. Restrictions on the liquidity of depository accounts and mandatory suspicious activity reports will deter financial criminals.
- ☐ The depository will be sustained by transaction, storage, and processing charges, as well as by legal, trust, and investment services fees.
- ☐ The depository's customers will not pay Montana taxes and the depository will not pay corporate income tax. The depository will, however, be assessed a semiannual fee based on the total value of assets on deposit and in the depository's vaults. It will also pay a \$50,000 initial charter fee and an annual \$10,000 renewal fee to help meet the state's regulatory costs.
- ☐ If the depository is built, a reputable company obtains a charter, and wealthy foreigners choose Montana as a place to store some of their capital, the depository will generate substantial revenue for the state's general fund.

The foreign capital depository is a speculative venture. The draft enabling legislation is the interim subcommittee's best effort to ensure the depository's successful operation, but changes may be necessary to enhance the institution's commercial viability.

Enabling legislation for the Foreign Capital Depository

GOALS

- ✓ Maximize individual financial privacy within parameters of federal law.
- ✓ Require chartered depository to provide prudent degree of asset protection to customers.
- ✓ Assure reasonable profitability for depository via allowable fees & favorable tax regime.
- ✓ Establish clear eligibility criteria for depositories and their customers.
- ✓ Minimize state liability and risk in arenas of negligence, fraud, criminal abuses.
- ✓ Maximize economic benefits to Montana of foreign capital on deposit.
- ✓ Accommodate technological advances involving privacy, security, costs of transactions.
- ✓ Deter criminal elements from using the depository as a vehicle for money laundering.
- ✓ Delineate & assign regulatory functions/responsibilities in a coherent, cost-effective way.
- ✓ Minimize federal involvement without forgoing essential benefits of oversight.
- ✓ Structure a functional relationship to platinum bullion and other tangible assets.
- ✓ Provide for methods of revenue assessment, collection, and distribution.
- ✓ Amend existing statutes to except, exempt, or include Foreign Capital Depositories.

FOREIGN CAPITAL DEPOSITORY

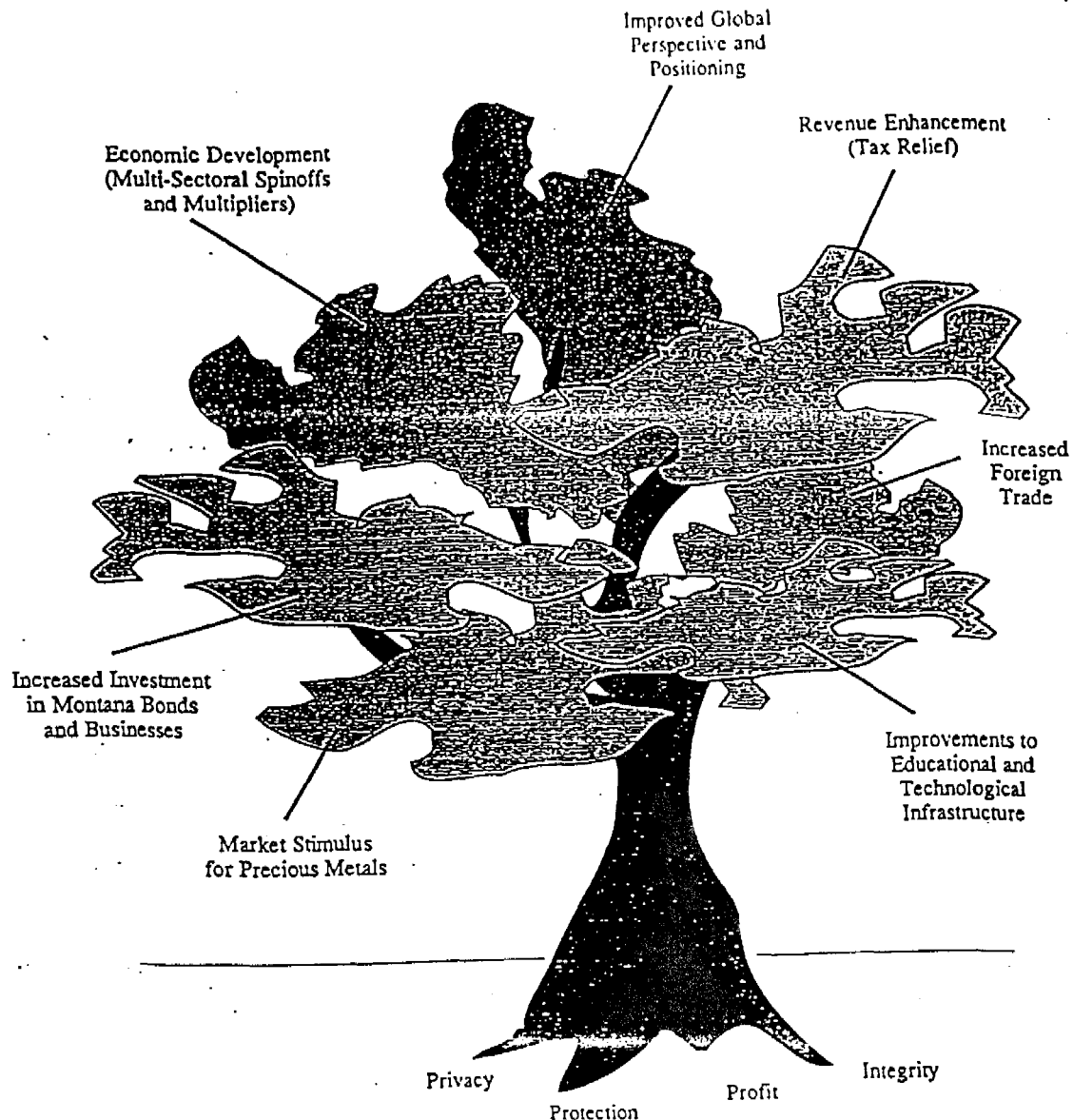
CONDITIONS FOR SUCCESS

- > **Political stability**
- > **Legal protections for customers, depository and state**
- > **A "sterling" professional reputation**
- > **Strict licensing & enforceable regulatory requirements**
- > **Respect for national & international laws against financial crime**
- > **Competitive taxes and fees charged to depositors**
- > **Severe penalties for breaches of confidentiality**
- > **Low transactions costs**
- > **Public acceptance (a good cultural "fit")**
- > **Sophisticated security systems**
- > **Highly skilled & well-trained labor force**
- > **Effective international marketing**
- > **Location (mystique; accessibility; investment potential)**
- > **Enabling legislation that works**

IN SUM...

INTEGRITY & LEGITIMACY

THE MONTANA DEPOSITORY "MONEY TREE"



Montana Soil: Rocky, Yet Fertile

The Montana Money Tree is an attempt to illustrate the *roots* (privacy, protection, and profit) and *branches* (clusters of assorted economic benefits) of the Foreign Capital Depository. The *soil* connotes the cultural environment in which the depository would be planted, a mixture of Montanans' traditional wariness of outsiders and big business (rocky) and their strong devotion to individual rights and freedoms (fertile).

FOREIGN CAPITAL DEPOSITORY

CONDITIONS FOR SUCCESS

- > **Political stability**
- > **Legal protections for customers, depository and state**
- > **A "sterling" professional reputation**
- > **Strict licensing & enforceable regulatory requirements**
- > **Respect for national & international laws against financial crime**
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- > **Location (mystique; accessibility; investment potential)**
- > **Enabling legislation that works**

IN SUM...

INTEGRITY & LEGITIMACY

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 2

DATE 1-22-97

BILL NO. SB 83

SENATE BILL 83-FOREIGN CAPITAL DEPOSITORIES.

Amendment to limit Foreign Capital Depositories to serving only nonresident aliens as customers.

Amend Senate Bill 83, Introduced Bill:

Page 14, following line 6, by adding the following new language:

"(a) provide any services to any customer who is not a nonresident alien."

Retitle the following subparagraphs.

REVENUE GAINS (in \$millions)

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 3

DATE 1-22-97

BILL NO. 5 B 83

Rate of Assessment

Value of Assets on Deposit (in \$millions)

	0.50%	0.75%	1.00%	1.25%	1.50%	1.75%	2.00%	2.25%	2.50%
100	\$.5	\$.75	\$ 1	\$ 1.25	\$ 1.5	\$ 1.75	\$ 2	\$ 2.25	\$ 2.5
500	\$ 2.5	\$ 3.75	\$ 5	\$ 6.25	\$ 7.5	\$ 8.75	\$ 10	\$ 11.25	\$ 12.5
1000	\$ 5	\$ 7.5	\$ 10	\$ 12.5	\$ 15	\$ 17.5	\$ 20	\$ 22.5	\$ 25
5000	\$ 25	\$ 37.5	\$ 50	\$ 62.5	\$ 75	\$ 87.5	\$ 100	\$ 112.5	\$ 125
10000	\$ 50	\$ 75	\$ 100	\$ 125	\$ 150	\$ 175	\$ 200	\$ 225	\$ 250
50000	\$ 250	\$ 375	\$ 500	\$ 625	\$ 750	\$ 875	\$ 1000	\$ 1125	\$ 1250
100000	\$ 500	\$ 750	\$ 1000	\$ 1250	\$ 1500	\$ 1750	\$ 2000	\$ 2250	\$ 2500

SENATE BUSINESS & INDUSTRY

EXHIBIT NO. 4

DATE 1-22-97

BILL NO. SB 83

Amendments to Senate Bill No. 83
First Reading Copy

For the Committee on Business and Industry

Prepared by Bart Campbell
January 22, 1997

1. Page 14, following line 6.

Insert: "(a) provide services to any customer who is not a
nonresident alien;"

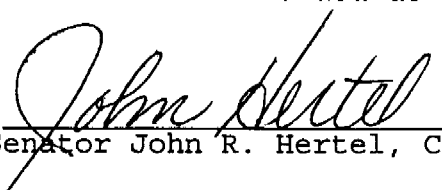
Renumber: subsequent subsections

SENATE STANDING COMMITTEE REPORT

Page 1 of 1
January 22, 1997

MR. PRESIDENT:

We, your committee on Business and Industry having had under consideration SB 83 (first reading copy -- white), respectfully report that SB 83 be amended as follows and as so amended do pass.

Signed: 

Senator John R. Hertel, Chair

That such amendments read:

1. Page 14, following line 6.

Insert: "(a) provide services to any customer who is not a nonresident alien;"

Renumber: subsequent subsections

-END-

 Amd. Coord.
61 Sec. of Senate

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DATE 1-22-97

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DATE 1-22-97

SENATE COMMITTEE ON Sen Bus + Ind

BILLS BEING HEARD TODAY: SB 83

< ■ > PLEASE PRINT < ■ >

Check One

Name	Representing	Bill No.	Support	Oppose
David R. Robertson	Self	83	✓	
Elaine Musick	Self	83	✓	
Alfred Robertson	Self	83	✓	
Elaine Musick	Self	83	✓	
Bill Leary	MBA	83	AMEND -	
Stephen Waly	Leg. Service	83		
John O'Leary	Self	83	✓	
Mike Kahl	DOT Info Only	83		
Keith L. Colbo	MIB	83		
John Caddy	MBA-UTBANKERS	83	AMEND	

VISITOR REGISTER

PLEASE LEAVE PREPARED STATEMENT WITH COMMITTEE SECRETARY

Opponents' Testimony:

Kerwin Jenson, City-County Planning, Billings, MT, EXHIBIT 5, 6, 7.

{Tape: 1; Side: 1; Approx. Time Count: 34.4; Comments: None.}

Andy Epple, representing Mayor and City of Bozeman

{Tape: 1; Side: 2; Approx. Time Count: .0; Comments: None.}

Jim Richards, MT Association of Planners

{Tape: 1; Side: 2; Approx. Time Count: 6.9; Comments: None.}

Cal Cummings, Billings Planning and Building Consultant.

{Tape: 1; Side: 2; Approx. Time Count: 10.6; Comments: None.}

Questions From Committee Members and Responses:

{Tape: 1; Side: 2; Approx. Time Count: 18.3; Comments: None.}

Closing by Sponsor: Sen. Sprague closed. EXHIBIT 8.

{Tape: 2; Side: 1; Approx. Time Count: 24.5; Comments: None.}

HEARING ON SB 83

Opening Statement by Sponsor: Sen. Sprague, S. D. 6 introduced the bill. EXHIBIT 9.

{Tape: 2; Side: 1; Approx. Time Count: 27.9; Comments: None.}

Proponents' Testimony: None

Opponents' Testimony: None

Informational Testimony: Peter Blouke, Dir. Dept of Commerce. EXHIBIT 10.

{Tape: 2; Side: 2; Approx. Time Count: 2.1; Comments: None.}

John Cadby, MT Bankers Assn.

{Tape: 2; Side: 2; Approx. Time Count: 5.8; Comments: None.}

Questions From Committee Members and Responses:

{Tape: 2; Side: 2; Approx. Time Count: 6.9; Comments: None.}

Closing by Sponsor: Sen. Sprague closed.

{Tape: 3; Side: 1; Approx. Time Count: 15.4; Comments: None.}

EXECUTIVE ACTION ON SB 62

Motion/Vote: Rep. Pavlovich moved do concur SB 62. Motion carried unanimously. Rep. Pavlovich to carry.

{Tape: 3; Side: 1; Approx. Time Count: 19.9; Comments: None.}

EXECUTIVE ACTION ON SB 192

Motion: Rep. Simon moved do concur SB 192.

{Tape: 3; Side: 1; Approx. Time Count: 21.4; Comments: None.}

Motion/Vote: Rep. Simon moved to adopt Simon amendments. Motion carried unanimously.

{Tape: 3; Side: 1; Approx. Time Count: 22.0; Comments: None.}

Motion/Vote: Rep. Devaney moved do concur SB 192 as amended.

Motion carried unanimously. Rep. Sliter to carry.

{Tape: 3; Side: 1; Approx. Time Count: 26.1; Comments: None.}

EXECUTIVE ACTION ON SB 83

Motion: Rep. Sliter moved do concur SB 83.

{Tape: 3; Side: 1; Approx. Time Count: 27.6; Comments: None.}

Motion/Vote: Rep. Sliter moved to adopt Sprague amendments.

Motion carried unanimously.

{Tape: 3; Side: 1; Approx. Time Count: 28.1; Comments: None.}

Motion/Vote: Rep. Sliter moved to amend page 32, line from .625 to .75. Motion carried unanimously.

{Tape: 3; Side: 1; Approx. Time Count: 28.4; Comments: None.}

Motion/Vote: Rep. Sliter moved do concur SB 83 as amended.

Motion carried unanimously.

{Tape: 3; Side: 1; Approx. Time Count: 28.9; Comments: None.}

Amendments to Senate Bill No. 83
Third Reading Copy

EXHIBIT 9
DATE 3/5/97
SB 83

Requested by Senator Sprague
For the Committee on Business and Labor

Prepared by Stephen Maly
February 1, 1997

1. Title, line 10.
Strike: "AND"

2. Title, line 13.
Following: "MCA"
Insert: "; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE"

3. Page 6, line 5.
Strike: "of \$5,000"
Insert: "set by the board under [section 12]"

4. Page 8, line 11.
Strike: "Charter"
Insert: "Application, charter,"
Following: "fee."
Insert: "(1) An applicant for a state charter shall pay a fee
established by the board by rule. The application fee must
be commensurate with the cost of conducting a background
check on the person applying for the charter."
Renummer: subsequent subsections

5. Page 8, line 12.
Following: "\$50,000"
Insert: ", less the amount paid for the application fee pursuant
to subsection (1)"

6. Page 8, line 15.
Strike: "and (2)"
Insert: "through (3)"

7. Page 14, lines 18 and 20.
Strike: "crime"
Insert: "felony"

8. Page 30, line 2.
Following: "purpose;"
Insert: "or"

9. Page 30, line 4.
Following: "system;"
Strike: "or"
Insert: "and"

10. Page 47, line 30.
Insert: "NEW SECTION. **Section 89. Effective dates.** (1) Except as
provided in subsection (2), [this act] is effective October
1, 1997.
(2) [Section 7] is effective on passage and approval."
Renumber: subsequent section



HOUSE STANDING COMMITTEE REPORT

March 5, 1997

Page 1 of 2

Mr. Speaker: We, the committee on **Business and Labor** report that **Senate Bill 83** (third reading copy -- blue) be concurred in as amended.

Signed:


Bruce Simon, Chair

And, that such amendments read:

Carried by: Rep. Ellingson

1. Title, line 10.

Strike: "AND"

2. Title, line 13.

Following: "MCA"

Insert: "; AND PROVIDING EFFECTIVE DATES AND A TERMINATION DATE"

3. Page 6, line 5.

Strike: "of \$5,000"

Insert: "set by the board under [section 12]"

4. Page 8, line 11.

Strike: "Charter"

Insert: "Application, charter,"

Following: "fee."

Insert: "(1) An applicant for a state charter shall pay a fee established by the board by rule. The application fee must be commensurate with the cost of conducting a background check on the person applying for the charter."

Renumber: subsequent subsections

5. Page 8, line 12.

Following: "\$50,000"

Insert: ", less the amount paid for the application fee pursuant to subsection (1)"

Committee Vote:

Yes 17, No 0.

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3-5-97

HOUSE OF REPRESENTATIVES

BUSINESS AND LABOR COMMITTEE

ROLL CALL

DATE 2/5/97

NAME	PRESENT	ABSENT	EXCUSED
Bruce Simon, Chairman	X		
Paul Sliter Vice Chairman	X		
Bob Pavlovich, Vice Chairman	X		
Joe Barnett	X		
Rod Bitney			X ✓
Sylvia Bookout	X		
Charles Devaney	X		
David Ewer	X		
Kim Gillan	X		
Billie Krenzler	X		
Bob Lawson	X		
Rod Marshall	X		
Gay Ann Masolo	X		
Wes Prouse	X		
Carolyn Squires	X		
Jay Stovall	X		
Cliff Trexler	X		
Joe Tropila	X		
Carley Tuss	X		